WHITE PAPER

Version I

Canada Organic Regime Enhancements Needed to Ensure Organic Integrity, Increase Consumer Confidence in the Canada Organic Logo & Reinforce our Equivalency Arrangements

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(ORC II)

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Foreword

The Organic Regulatory Committee, an ad hoc group of industry advocates, was active in the pre-Canadian Organic Regime (COR) era. Its sole purpose was to stimulate the creation of a Canadian organic regulatory system. The Canadian Organic Standard and maintenance system were already in place.

An organic regulatory system for international and interprovincial traders, the COR, came into effect in 2009. Intra-provincial organic trade regulations are a work-in-progress with five provinces compliant. Some eight years of domestic and international trade experience in an evolving global market indicate that the COR needs to be updated to remain contemporary and equivalent with our trading partners.

The Organic Regulatory Committee (ORC II) was reconvened 12 months ago with a sole term of reference stated as follows:

"To interact on an ad hoc basis with the Canadian Government and the Canadian Organic Industry to stimulate the revision of the Canadian Organic Regime and the underlying regulations to address Errors and Omissions (E&O) in the same and thereby enhance Canadian organic food integrity and ensure the continuity of our trade equivalency arrangements with the United States, European Union, Japan and other organic trading partners."

This "White Paper" is a discussion document to assist Canadian organic industry organizations in achieving the necessary changes to the COR and to communicate the need for change to the Government of Canada in a pro-active and cohesive manner. These changes are needed regardless of the future home of its fundamental regulation and administrative structure.

Version I of this paper does not address the recent CFIA proposal for increased cost recovery.

Executive Summary

In the eight years since its creation, the Canadian Organic Regime (COR) has given a "quantum leap" to the Canadian organic industry and the Canadian agricultural economy. It has increased domestic and international confidence in Canadian certified organic food products and has enabled increased international exports via a growing list of Equivalency Arrangements.

The COR, however, is not without flaws and has suffered numerous set-backs due to the inherent ambiguities, errors and omissions in the Organic Products Regulation (OPR). The flaws in the OPR have led to a plethora of ever-changing and often illogical certification requirements and/or restrictions on organic trade within Canada and the internationally. These problematic requirements/restrictions have been published in a 58 page "Operating Manual" and Canadian Food Inspection Agency (CFIA) Directives, none of which have been submitted for public or industry review and comment.

Most recently, the Government of Canada has decided to move the COR from Agriculture and Agri-food Canada (AAFC) to Health Canada jurisdiction. In so doing, the Government is also proposing the deletion of the OPR and replacement with Part 14 of the Safe Food for Canadians Regulation (SFCR). In anticipation of this move, the Government has already disbanded the Canada Organic Office and erased the organic job titles of its former occupants.

A Canada Organic Products Act

A representative cross-section of organic industry stakeholders (exclusive of aquaculture) has reached consensus in opposing the deletion and replacement of the OPR and the move to Health Canada. It proposes instead, that the Government of Canada: (i) create a Canada Organic Products Act under the AAFC, (ii) retain and rewrite the Organic Regulations and, (iii) reinstate and augment the Canada Organic Office. The implementation of this proposal would revitalize the COR and reverse the process of Government abandonment now apparent.

The organic industry further proposes that the Government of Canada immediately place a moratorium on the deletion of the OPR and the move of the COR to Health Canada. It also asks that the Minister of AAFC appoint a "Ways and Means" Task Force to assess this alternative proposal.

Opportunity for Enhancement of the COR

This White Paper sets out the major issues in the COR that urgently need to be addressed. It describes each issue, discusses its impact on organic trade and proposes corrective actions for the same. Its authors also comment on the major issues requiring corrective actions in the proposed SFCR but leave detailed comments on the SFCR to others in the industry.

The Organic Regulation

The existing OPR and proposed SFCR are skeletal in that they rely instead on a 58-page Canada Organic Office Operating Manual and numerous CFIA Directives for critical administrative details. Ongoing changes to the latter documents are not subject to public and industry review and input. The Canada Organic Office Manual and Directives need to be submitted for public review and comment.

Legal/Administrative Enhancement

Seven enhancement opportunities ranging from restoration of the Canada Organic Office, providing adequate appeal mechanisms for all regulated parties, establishing contractual relationships for Certification Bodies, liaison between the Canadian Food Inspection Agency (CFIA) and Certification Body verification teams, levelling the Certification Body accreditation playing field to dealing with the fragmented intra-provincial organic trade regulation conundrum are presented. Most of the proposed corrective actions imply revising the Organic Regulations.

Enhanced Enforcement Opportunities

The Safe Food for Canadians Act and proposed SFCR provide for substantial sanctions for contravention of their provisions. This is a major improvement and will substantially enhance confidence in the COR and its logo <u>if</u> Section 39(1) of the Safe Food for Canadians Act applies (or is applied) to Part 14 of the Regulation.

However, neither the OPR nor the proposed SFCR stipulate operator cancellation periods before reapplication. The "False or Misleading Information" cancellation provision needs to be reinstated and embellished in the proposed Regulations. The COR residue testing program lacks a scientific base and needs rationalization. Finally, an international organic food fraud co-ordination mechanism is needed and proposed.

Enhancing the Certification Policies and Procedures

The flaws in the Organic Regulations and the resulting ever-increasing complexity of organic certification rules and directives caused by these flaws, are retarding the growth and stability of the Canadian organic industry.

There are at least eight opportunities to enhance the organic certification policies and procedures of the COR at this time. Most of these are related to deficiencies in the Organic Regulations which have been carried forward in the proposed Regulations and, in some cases, exacerbated in the proposed Regulations. Other changes to the proposed Regulations, which will enhance the certification process, are also being compiled by others at the time of writing.

These proposed corrective actions, if adopted by the CFIA regulation team, will substantially reduce the complexity of certification documents and procedures and restore ISO 17065 compliance to the COR. The proposed enhancements will make Canada's organic industry competitive again and will reinforce our international trade equivalency arrangements.

International Equivalency Enhancement

Deglobalization of trade including organic food and fibre, is a real threat to Canada's export based food industry. It is now imperative that the COR and its supporting legislation, regulation and interpretive guidelines be reviewed and revised to ensure the future renewal of the numerous and critical organic Equivalency Arrangements.

First and foremost are the adoption by the CFIA and Health Canada of the changes to the COR and the Organic Regulations set out in this White Paper and by others under separate cover.

Secondly, there is an immediate need to rescind the Canada Organic Office "rules" prohibiting certification of Canadian produce and products to the US, EU, Japanese and other national programs. These "rules" are not Organic Regulations-based and are easily fixed.

The Canadian Standards Maintenance and Ambiguity Issues

The Government of Canada, owner of the Canadian Organic Standards which are the foundation of the COR, at each compulsory five-year review event places the entire Canadian organic industry at risk by threatening to renege on its inherent responsibility to pay for the cost of this review. At the same time, the Government insists on a cumbersome and expensive standards review system designed for engineering safety. The cost of this review has now reached $1,000,000 and takes over two years to complete. It should cost substantially less and take much less time. The end products of these reviews are replete with ambiguities and require a permanent Standards Interpretation Committee, an additional cost to the Government and the industry.

An affordable and efficient alternative Canada Organic Standards maintenance and review method is needed.

In summary, given the veracity of even a portion of the contents of this White Paper, there is an urgent need to overhaul the COR including a rewrite of the Organic Regulations to more fully harmonize it with the Canada Organic Standard and ISO/EC Guide 17065 and to remove potential and real threats to our international organic trade arrangements with the USA, Europe and other countries. Enhancement of Canadian consumer perception of the integrity of the COR logo is implicit in this proposed overhaul.

A Moratorium on the Move to Health Canada

Above all it is critical that the Government of Canada place an immediate moratorium on the proposed move of the COR from AAFC to Health Canada and consider instead the creation of a Canada Organic Products Act, the retention and revitalization of the Organic Regulations and the Canada Organic Office and the enhancement of the COR.

1.0 BACKGROUND ON CANADIAN ORGANIC REGULATION SYSTEM

1.1 The Self-Regulation Era

The organic movement in Canada (and the world) evolved from a grass roots movement to a self-regulation industry in the period 1920 to the early 1990s. A diverse system of standards, third party certification systems and organic quality symbols coupled with producer, processor and consumer buy-in effectively created an alternative food production and distribution system. This system was extremely effective for local and domestic organic trade regulation but failed to address the concerns of international traders and regulators.

1.2 The Government Regulation Era

The EU and USA created organic food legislation in the early 1990s. Canada followed suit by bringing the Canadian Organic Regime (COR) into force in 2009.

The COR as introduced and as subsequently embellished now consists of the following integral components:

1. The Organic Products Regulation under the Canadian Agricultural Products Act.
2. The Canadian Organic Standards owned and maintained by the Canadian General Standards Board (CGSB) and referenced in the Organic Products Regulations.
3. The Canadian Food Inspection Agency (CFIA) as an administrator and enforcer of the OPR, as an accreditor of Conformity Verification Bodies (and Certification Bodies).
4. The Canada Organic Office.
5. An Operating Manual for the Canada Organic Office.
6. Periodic directives from the CFIA.
7. A group of Conformity Verification Bodies responsible for oversight of the Certification Bodies.
8. A group of private sector Certification Bodies responsible for oversight of operator compliance and product integrity.
9. The CFIA Enforcement and Investigation Services (EIS) responsible for label and Organic Products Regime (OPR) enforcement.
10. An evolving list of Equivalency Arrangements, which at this time includes the countries of USA, EU, Japan, Costa Rica, Taiwan and Switzerland.
11. The Standards Interpretation Committee, which is not referenced in the OPR.

At the time of writing, the COR (along with its administrator, the CFIA) is being moved from the Ministry of Agriculture and Agri-Food Canada (AAFC) where it falls under the Canadian Agricultural Products Act and the Organic Products Regulation, to the Ministry of Health Canada under the new Safe Food for Canadians Act. Part 14 of the proposed SFCR, which was gazetted

on January 21, 2017, sets out the provision for Organic Products. There are numerous differences between the old OPR and the proposed SFCR, Part 14.

2.0 A CANADA ORGANIC PRODUCTS ACT

In assessing the proposed move of Canadian Organic Products Regulation from AAFC to Health Canada, the industry, via a cross section of representatives, is reaching consensus on an alternative proposal – the creation of the Organic Products Act under the Ministry of Agriculture and Agri-Food Canada, the retention and extensive overhaul of the Organic Products Regulations and the retention and revitalization of the Canada Organic Office. Such an initiative has been deemed infinitely superior to the current notion of moving our industry from an OPR to Section 14 of a SFCR and the disbanding of the Canada Organic Office, which has already occurred.

2.1 The Proposal

The Ministry of Agriculture and Agri-Food Canada would be responsible for all aspects of the Canadian Organic Regime except for those aspects of product label compliance which fall under the auspices of the Enforcement and Investigation Services (EIS) group of the Canadian Food Inspection Agency. This concept is depicted in Figure 2.1 below.

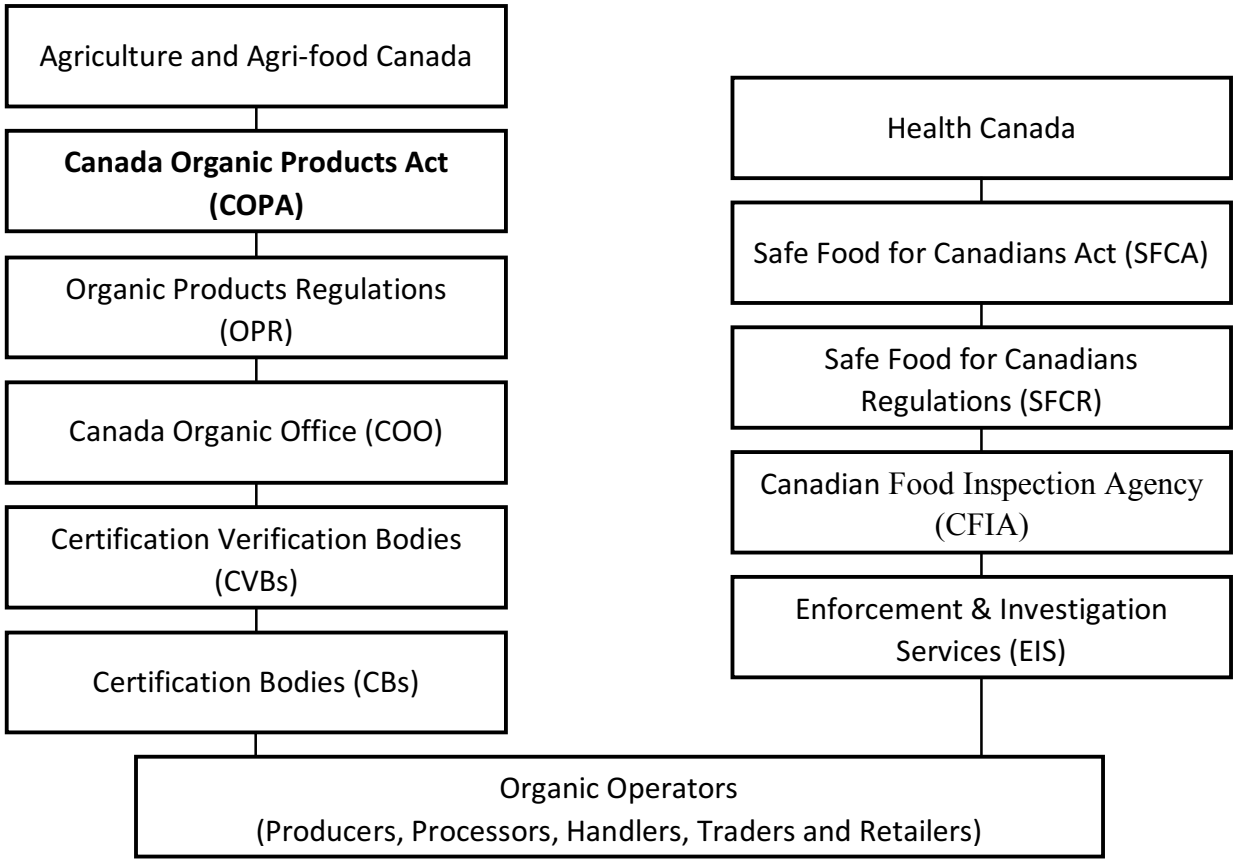
The Canadian Organic Standards would be owned by AAFC, referenced in the Organic Products Regulation and maintained by an appropriate standards management agency.

2.2 Rationale

The COR which is a food quality verification program has never been a "good fit" for the CFIA which is a food safety verification and enforcement agency. The CFIA (and the Safe Food for Canadians Act) only deals with food and feed products, whilst the organic designation also encompasses cosmetics, pet food, fibre products, floriculture, and herbal medicines, putting the Canadian organic industry at a disadvantage with its trading partners which have broader regulatory scope.

The blending of the Canada Organic Regime into the Safe Food for Canadians Act has the perception and the reality of diminishing its identity. The reality of these mixing initiatives has already been demonstrated with the unannounced disbanding of the highly effective and necessary Canadian Organic Office. This is a major retrogressive change. The rationale for reversing this change at the earliest opportunity is discussed in Section 5.0 below.

Figure 2.1 **Tentative Schematic of the COR under Agriculture and Agri-food Oversight Coupled with Health Canada/CFIA Enforcement.**



Agriculture and Agri-Foods Canada is a more logical fit and is better suited for the long-term administration of the Canada Organic Regime.

The organic industry has proven itself as a permanent fixture in the Canadian agribusiness sector, and because of its multi-commodity scope and unique status deserves its own Act and Regulation. The impact of such a positive initiative on domestic and international confidence in the Canada Organic logo would be tangible and substantial.

Last, but not least, the Canadian organic industry has earned a promotion rather than a demotion.

2.3 A "Ways and Means" Task Force

There is an urgent need to establish a "Ways and Means" Task Force to explore this concept. Industry and government representation is implicit in this suggestion. The "pros" and "cons" need to be identified as a first task. Time is of the essence.

2.4 A Moratorium on the Move to Health Canada

The need for some 33 enhancements to the Canada Organic Regime plus time to explore, evolve and assess the notion of an organic act may require a moratorium on the proposed move of the organic sector to Health Canada.

3.0 ENHANCING THE CANADIAN ORGANIC REGIME (COR)

The Canadian Organic Regime (COR) as it now stands is not perfect. There are numerous issues that need to be addressed regardless whether the Regime moves from Agriculture & Agri-Food Canada to Health Canada or stays where it is. The authors of this White Paper discuss these issues under six headings:

1. Organic Regulation Organization, Content & Name
2. Legal/Administrative Issues
3. Enforcement Issues
4. Certification Issues
5. Equivalency Issues
6. The Chronic Standards Maintenance and Ambiguity Issue

Each issue is then described and discussed in terms of impact and proposed corrective action.

The issues addressed in this White Paper are not an exhaustive list. However, the Paper attempts to identify the major issues which need to be rectified by the Government of Canada.

4.0 ORGANIC REGULATION – ORGANIZATION, CONTENT & NAME

4.1 Organization of the OPR and Proposed SFCR

Neither the existing Organic Products Regulation nor the proposed regulations under the Safe Food for Canadians Act are closely harmonized with the Canadian Organic Standards. Likewise, neither document reflects the certification policies and procedures explicit in ISO/IEC Guide 17065. The latter issue is addressed in Section 6.1 of this discussion paper. The organizational, content and nomenclature issues to be addressed are discussed below.

4.1.1 Scope

The scope of organic food production and processing activities which are included in the proposed SFCR is not mentioned. A statement of scope should occur at the beginning of the document.

4.2 Content of the OPR and Proposed SFCR

4.2.1 COO Operating Manual & Directive Content

The contents of the Canada Organic Office Operating Manual, a regulation in itself, have never been subjected to full public review and comment and can be changed at any time without such review and comment. See also Section 5.2 of this White Paper.

The Operating Manual and the mechanism for revision and for public review and comment of revisions need to be clearly stated in the Organic Regulations.

Most of the content of the CFIA Organic Directives also need to be made available for public review and comment.

4.2.2 Terms and Definitions

There is a need to include in the Organic Regulations more of the terms, and terminology used in the Canadian Organic Standards, which are critical to the determination of conformity to the regulation and the standards. Likewise, these terms need to be included in the Organic Regulations under "definitions". Some key examples are given below noting that nomenclature from the aquaculture standard CAN/CGSB 32:312 are not addressed in this White Paper:

- Organic plan
- Organic product
- Multi-ingredient product
- Co-mingling
- Manufacturing
- Processing
- Preparation
- Treating
- Handling
- Slaughtering
- Producing
- Storing
- Packaging
- Labelling
- Conveying
- Operator

There are numerous terms in the Organic Standards that need to be included in the organic Regulations. For example, "preparation" is included in the Organic Standards but not in the Regulations. This is a key term! Similarly, "treating" is mentioned in the Regulations but not in the Organic Standards.

In essence, the Organic Standards and the Organic Regulations terminology must be harmonized.

4.2.3 ISO 17065 Compliance

The policies and procedures in the Organic Regulations are not International Standard Organization (ISO) Guide 17065 compliant despite that these documents claim ISO 17065 compliance. This topic is discussed in more detail in Section 7.1 of the White Paper.

4.4 Proposed Corrective Actions

Given the constructive criticisms above and elsewhere in this document and the many comments which are anticipated for revising the proposed organic Regulations, it seems reasonable that a complete "re-write" of the organic regulations is an appropriate corrective action. Public scrutiny of the Canada Organic Office Manual and Directives content is implicit in this proposal.

5.0 LEGAL/ADMINISTRATIVE ISSUES

5.1 The Restoration and Enhancement of the Canadian Organic Office

5.1.1 Description

The Canada Organic Office as originally envisaged and subsequently constituted has been key to the growth of the Canadian organic industry. It has been understaffed and underfunded relative to its USA counterpart, the National Organic Program office. It has been, nevertheless, a highly successful and effective administrative body. The Canada Organic Office no longer exists as a cohesive unit; all "organic" titles have been erased. There is concern as to what will happen to excellent initiatives such as the Certification Body Working Group. Will such future initiatives be possible without a dedicated administrative office for the Canada Organic Regime?

5.1.2 Impact

The demise of the Canada Organic Office and the dispersion of the staff throughout the CFIA coupled with the "erasing" of all organic office titles from correspondence and legal documents will and is already sending negative shockwaves throughout the domestic and international community.

The net message is one of lost emphasis and interest in the organic sector by the Government of Canada.

5.1.3 Proposed Corrective Actions

A couple of actions are needed to restore the Canadian organic industry's image in this major matter.

Action #1:

Immediately restore the Canada Organic Office as originally constituted and staffed including the titles which the domestic and international business community have grown accustomed to.

Action #2:

Establish a Canada Organic Oversight Body with Government and organic industry representation. This concept is expanded in Appendix C hereto.

5.2 The COO Operating Manual and Directives Issue

5.2.1 Description

The Organic Regulations lack sufficient detail to adequately govern the Canada Organic Regime. Therefore, the Canada Organic Office has produced, an extensive 58-page Operating Manual and a number of Directives. Neither the Operating Manual nor the Directives are subject to consultation with the organic industry. The Directives, mostly, have been submitted to the Certification Bodies for review and comment. The last industry input into the Operating Manual occurred in 2007. The industry is not asked to review or comment on the Directives.

5.2.2 Impact

The dependence of the CFIA on the Operating Manual and Directives, enables it to govern the Canadian Organic industry without input or oversight from that industry. This has led to numerous self-imposed non-tariff organic trade barriers including but not limited to those discussed in Section 8.3 of this White Paper.

5.2.3 Proposed Corrective Actions

Most of the content of the Operating Manual Version 14 should be submitted for public comment. The reduced and revised Operating Manual (Version 15) and future versions should be submitted to the industry for comment. There are examples of regulatory wording in the

Operating Manual that need to be included in the Organic Regulations such as the appeal procedures for Certification Bodies and Conformity Verification Bodies.

All historic CFIA Directives should be reviewed to determine if they should be included in the Organic Regulations. All future CFIA Directives should be submitted to the industry for comment.

The Canada Organic Office Operating Manual mechanisms for revision and comment should be set out in the Organic Regulations.

5.3 The Lack of Appeal Mechanisms Issue

5.3.1 Description

The appeal mechanisms mentioned in the Organic Regulations which provide operators with "an opportunity to be heard" by the Certification Body has been found lacking by a Federal Court judge. A 2016 ruling described the Organic Regulation mechanism as "laconic at best". The judge in this case was not persuaded that the Certification Body in question had an ISO 17065 compliant appeal procedure even though the CFIA via several Conformity Verification Bodies had found the Certification Bodies' Appeal Procedure fully compliant with ISO 17065. In essence, ISO standards do not trump Canadian appeal law.

The Canadian Organic Regime does not have appeal procedures for its Certification Bodies and Conformity Verification Bodies, other than the vague right to request a review by the CFIA of CFIA decisions set out in Sections B5 and B6 of the Operating Manual. The CFIA has a "Complaints and Appeals Office". However, its existence, functions and applicability is not mentioned in the Organic Regulations, or CFIA Organic Directives.

The USDA National Organic Program (NOP) in contrast has a robust appeal procedure in which it takes full responsibility for any operator appeals of Certification Body decisions. Similarly, the USDA has a concise appeal procedure for its accredited Certification Bodies.

5.3.2 Impact

The absence of legitimate appeal procedures for operators, Certification Bodies and Conformity Verification Bodies in the Organic Regulations leaves Certification Bodies, Conformity Verification Bodies and the CFIA vulnerable to expensive court challenges of any and all certification decisions.

Given the financial liability, additionally that standard errors and omissions insurance schemes do not cover this phenomenon, and the CFIA has no contractual obligation or inclination to

defend Certification Bodies or cover their legal costs, Canadian organic Certification Bodies are now in an untenable position. It is also fair to suggest that impartial cancellation decisions by Canadian Certification Bodies are no longer possible under these liability conditions.

Given the above, the lack of a legitimate appeal mechanisms in the Canada Organic Regime is a major concern. It must be addressed at the earliest opportunity and before the next round of Equivalency Arrangement reviews.

5.3.3 Proposed Corrective Actions

The Organic Regulations must be revised to provide appeal mechanisms for all entities governed by the regulation. This mechanism must meet the requirement/standards of Canadian law and must be consistent with the appeal arrangements provided by the USDA NOP, the EU and Japan in their organic regulations.

Scope of Appeal Provisions

The Organic Regulations must include the following parties in the scope of its appeal mechanism:

1. Organic Operators – applicants for initial certification and extension certification by Certification Bodies.

2. Organic Certification Bodies – applicants for CFIA accreditation.

3. Certification Verification Bodies – applicants for CFIA accreditation.

Impartiality of Appeal Body

The appeal body must meet standard legal criteria for impartiality; it should not include CFIA employees.

5.4 The Lack of CFIA/CB Contractual Relationships

5.4.1 Description

The COR does not provide for or require a contractual relationship between the CFIA and its CBs. The COR via the COO Operating Manual Part A provides for such an arrangement between the CFIA and its CVBs.

5.4.2 Impact

In the absence of clearly defined reciprocal responsibilities which are set out in legal contracts, CBs are left financially responsible for certification decisions made in accordance with the COR. This was clearly demonstrated in a 2016 application by an organic operator for a Federal Judicial Review of a CB cancellation decision made in full accordance with the COR. The CFIA filed a motion to have its name removed from the application and to have it replaced with the name of the CB.

The legal cost to the CB of defending its decision is estimated at $25,000 to $100,000 per event. The legal cost to the CB in this case had reached nearly $40,000 when the operator withdrew the application and applied to another CB for certification. The internal cost to the CB was at least as large as the legal cost.

The CFIA, to date, has refused to discuss the ramifications of this case with the CB involved or any of the other CBs operating under its accreditation arrangements. The CFIA has also to date refused to discuss the responsibility for the legal costs paid by the CB involved in this case.

5.4.3 Proposed Corrective Actions

The CFIA must enter into contractual agreements with each of its accredited CBs to clearly define reciprocal responsibilities. As a minimum, this contract must specify the CFIA's role in responding to operator legal challenges of CB certification decisions.

As a further minimum, the CFIA must assume responsibility for the legal costs of such challenges only subject to a review of shared liability, if any, in a particular case.

5.5 The Need for CFIA Inspection Team/Certification Body Liaison

5.5.1 Description

The CFIA internal inspection team (Enforcement and Investigation Services) conducts its organic product label and integrity investigation of certified organic products without interacting with the Certification Bodies responsible for the certification of the products in question. In the case described in Section 5.3 above, the Certification Body was not contacted by the CFIA until months into the investigation, and not until after charges against the operator had been laid by the CFIA.

5.5.2 Impact

The notion of the "left hand not knowing what the right is doing" results in redundancy, duplication of work and inconsistency in enforcement events. The two groups working together on fraud issues would be a very effective team.

5.5.3 Proposed Corrective Actions

There is an urgent need to establish a protocol for liaison between CFIA accredited Certification Bodies and CFIA's EIS team regarding: (i) the notification of investigation underway, (ii) the exchange of information gleaned during investigations, and (iii) final resolution of investigations.

5.6 The Unequal Accreditation/Certification Playing Field

5.6.1 Description

Not all CVBs are created equal and, likewise, not all CBs are created equal. At the present time, the COR utilizes three CVBs to assist them in accrediting 26 CBs.

Two of the three current CVBs are of provincial origin and scope, one is international. The BC CVB does not accredit CBs located outside of BC; the Quebec CVB accredits CBs working in Quebec as well as CBs working outside of Quebec. The Quebec CVB does not accept the CFIA accreditation of CBs located outside of Quebec and working in Quebec despite the fact that it is required to do so by the OPR/SFCR. The Quebec CVB interprets provisions in the COR differently than the other CVBs and often differently than the CFIA.

There are also some serious discrepancies between the level of oversight of CBs between CVBs.

5.6.2 Impact

The variability in CVB "operating rules" and level of CB oversight have resulted in variable CB diligence in oversight of organic operators by CBs operating in Canada. This phenomenon erodes operator and consumer confidence in the COR and its logo. This variability issue is clearly demonstrated by the ongoing migration of operators with numerous and often chronic non-compliances from certifier to certifier in search of "easy" certification. Under the present CVB arrangement in Canada, this migration and search often is successful.

5.6.3 Proposed Corrective Actions

A complete review, in the near future, of the CVB/CB accreditation system under the COR is essential. It is proposed that a Task Force under the OVCRT be established to undertake this review and to propose corrective actions.

5.7 The Intra-Provincial Trade Issue

5.7.1 Description

The exclusions of intra-provincial organic trade in the OPR and the proposed SFCR, apparently, is an artifact of Canadian jurisdictional law. The result of this exclusion means that the term "organic" as it applies to food and feed only is regulated for inter-provincial and international organic trade.

5.7.2 Impact

The impact on informed, domestic consumer confidence in the COR has been and continues to be substantial and negative. The number of Canadian provinces which now have parallel organic regulations has increased from one in 2009 to five in 2017. These "parallel" provincial regulations are not necessarily harmonized with the COR or with each other and hence exacerbate the unlevel playing field in Canada.

The lack of a coordinated holistic domestic organic regulatory system in Canada may also cause problems for future equivalency negotiations. The USDA NOP is holistic and only excludes very small organic producers.

5.7.3 Proposed Corrective Actions

The Government of Canada, at this time of COR revision, must seek ways and means of either:

1. creating a holistic COR which covers all organic trade domestic and international, or,
2. insisting that the remainder of the provinces without organic regulations create one by a set date, say December 31, 2018.

6.0 ENFORCEMENT ISSUES

6.1 The Lack of Cancellation Periods

6.1.1 Description

The Organic Regulations do not specify a waiting period before cancelled operators can reapply for certification . At present, an operation which is cancelled by one Certification Body can simply reapply to another Certification Body and carry on business within days and weeks of the initial cancellation. The USDA specifies a five-year cancellation period.

6.1.2 Impact

The routine migration of sometimes fraudulent operators from Certification Body to Certification Body (also known as "Certifier Hopping") often without the elimination of non-compliances and/or fraudulent activities has become common in the absence of cancellation periods in the Organic Regulations.

This phenomenon has not gone unnoticed by the organic industry and informed consumers. It has reduced confidence in the Canada Organic Regime.

This serious omission in the Organic Regulations, if not adequately corrected, could also result in the loss of our Equivalency Arrangements with the USA and other countries.

6.1.3 Proposed Corrective Actions

This Regulatory artifact can be eliminated by:

a. specifying a cancellation period of at least five years;
b. requiring Canada Organic Office approval of all reinstatement of cancelled operators;
c. enforcing the fines and penalties.

6.2 The "False or Misleading Information" Cancellation Provision

6.2.1 Description

The Canada Organic Regime, via Organic Products Regulation section 20(5)(a) specifies that a Certification Body must cancel the certification when an application contains false or misleading information. This is a useful provision. The scope and enforcement of this clause are not clearly understood and have not been defined by the CFIA.

This clause is very broad in nature and implies that any error made by an applicant in the initial and/or extension application for certification and/or relevant information provided to a Certification Body could result in the cancellation of the operator's certification. This provision appears to have been omitted in the Safe Food for Canadians Regulations, despite serving a useful purpose.

6.2.2 Impact

This vague provision in the Organic Regulations has resulted in variable usage by Certification Bodies ranging from none to frequent. As a result, Canadian operators are not treated uniformly and impartially.

6.2.3 Proposed Corrective Actions

This provision should be included in the organic Regulations with specific reference to false information regarding an Organic Plan which if accepted at face value could result in an inappropriate certification decision.

6.3 Enhancing the Residue Testing Protocols

6.3.1 Description & Impact

There are two issues regarding residue testing to be addressed. The first involves the Canada Organic Regime, the second, requires international intervention.

Issue #1 – CFIA Directive #14-01

The CFIA recently issued a directive (Appendix D) which drastically increases the Certification Body and operator response activity associated with monitoring trace levels <5% of Maximum Residue Level of pesticides in products. The "<5% rule" is an arbitrary rule and has no meaning when Maximum Residue Levels already are set at or below methodology detection limits.

This directive is not based on sound science or necessity, and if left in place, imposes a new and major financial and logistical burden on Certification Bodies and certified operators.

Issue #2 – International Protocols

Regulatory and/or Market forces in Europe (and other jurisdictions) have effectively created a non-tariff trade barrier based on over-interpretation and/or misinterpretation of pesticide residue levels in Canadian organic products. These forces use Maximum Residue Level concentrations which are often at or below the detection limits of the analytical methodology available to trigger expensive and time consuming investigations by Certification Bodies. As a result, the export of Canadian organic products is restricted and opportunities for trade are suppressed.

6.3.2 Proposed Corrective Actions

Issue #1 – CFIA Directive #14-01

1. Rescind directive #14-01 and revert to the existing standard operating policies and procedures in the Canada Organic Office Operating manual.
2. Establish an ad hoc working group with Certification Body and pesticide residue expert participants to review the Standard Operating Policies and Procedures and to determine what change, if any, is needed.

Issue #2 – International Protocols

1. Establish an international Task Force to rationalize and standardize pesticide (and GMO) Maximum Residue Levels and protocol for determining if and when follow-up by Certification Bodies is required for trace pesticide (and GMO) contamination.
2. Include this issue in the Terms of Reference for future equivalency negotiations and reviews.

6.4 The Need for an International Organic Fraud Mitigation Protocol

6.4.1 Description

The 21st Century consumer is increasingly better informed about food integrity issues. Canadian and USA organic imported food fraud events, including certified organic food imports are regularly exposed in social and mainstream media. At present, there is no specific mechanism for international organic food regulators to exchange fraudulent event information and/or the existence of fraud investigations between countries.

6.4.2 Impact

North American consumer distrust of so-called organic imported produce and products, many of which are used and needed, in multi-ingredient food products, impacts domestic consumer confidence and hence the organic market as a whole.

6.4.3 Proposed Corrective Actions

There is a need for an “International Organic Fraud Mitigation Protocol” with participation of all organic food exporting and importing countries.

There is also a need to consider declining applications for Equivalency Agreements from countries with endemic food fraud and corruption histories.

6.5 Positive vs. Negative Lists of Operators

6.5.1 Description

The Canada Organic Office publishes lists of suspended and/or cancelled operators on a periodic basis – i.e. a negative list of organic operators. This list is usually out of date.

The USDA, in contrast, publishes a reasonably up-to-date list of all current certified organic operators – i.e. a positive list. This list is highly appreciated by the industry and by the consumer for verification of the organic status of retail products.

6.5.2 Impact

Canada's negative and out-of-date list is of little real value to the industry or the concerned consumer. The latter must now go to Certification Body websites to verify product certification status.

6.5.3 Proposed Corrective Actions

The Canada Organic Office needs to publish an up-to-date positive list of operators certified to the Canada Organic Regime. This list could exist in addition to or instead of the current negative list.

7.0 CERTIFICATION ISSUES

7.1 The Need for an ISO Certification Operating Procedure & Schematic

7.1.1 Description

The Canada Organic Regime does not have a definitive ISO 17065 compliant certification operating procedure and schematic. For example, the Organic Regulations do not differentiate between "Initial and Extension" applications in the case of non-expiring certificates. This flaw is further demonstrated by the proposed Safe Food for Canadians Regulations that all certificates expire 12 months after issuance. This issue was also raised in Section 7.3 of this paper.

7.1.2 Impact

The absence of explicit ISO 17065 compliant certification procedures, nomenclature and schematics in the Organic Regulations results in numerous ambiguities in the regulations and the need for extensive interpretative guidance documents and directives.

7.1.3 Proposed Corrective Actions

There is a need for the organic Regulations to adapt the ISO 17065 procedures, nomenclature and schematics.

It is proposed that the organic Regulations be reworded to clearly require Certification Body standard operation policies and procedures for certification which are consistent with ISO 17065 and which have the following essential components:

1. An Initial Certification application procedure for new applicant operators.
2. An Annual Extension of Certification application procedure for previously certified operators.
3. A requirement for an annual preliminary evaluation of organic plans for both new and extension applicants prior to on-site verification (inspection).
4. An annual on-site verification during the growing season, and in the case of processors, during a processing event.
5. An annual final evaluation of all information available in support of compliance by a CB person (or persons) other than the on-site inspector.
6. An initial and annual certification decision by a qualified person other than the inspector or final evaluator.
7. The issuance of initial certificates and extension certificate if applicable OR the issuance of notice of non-compliances, proposed suspension and cancellation if applicable.
8. Surveillance activities including but not limited to unannounced inspections.
9. A generic schematic of such a system such as that presented in Appendix A hereto.

7.2 The "Family of Certificates" Issue

7.2.1 Description

The OPR "Family of Certificates"

The number and types of Certificates of Organic Conformity, which must be issued by a Certification Body under the Organic Regulations, proliferated from **one,** at the time it was brought into force, to **four** at the time of writing this White Paper. This proliferation was accomplished via the Canada Organic Office operating Manual and a series of CFIA directives, a recent one of which is attached hereto as Appendix B.

These document types and their characteristics are listed below:

Certificate of Conformity	Usage/Applicability	Expiry/Renewal
Organic Product Certificate	Organic Products	Does not expire. A certificate must be issued for new organic product on an annual basis as per subsection 12(1) of the Organic Regulations.
Organic Packaging and Labelling Certificate	Packaging and Labelling Activities – Organic Products	Remains in effect for a period of 12 months beginning on the day it was granted, as per subsection 15(2) of the Organic Regulations.
Attestation of Compliance Certificate	Various Activities – Organic Products	Remains in effect for a period of 12 months beginning on the day it was granted.
Certificate of Inspection	Various Activities – Organic Products for Export	Not specified.

Note: There is an unofficial fifth Certificate of Conformity entitled "Letter of Good Standing."

The Organic Product Certificate does not expire; the others expire 12 months after issuance.

The Proposed "Family of Certificates"

The number and types of Certificates of Organic Conformity which can be issued by a Certification Body under the proposed Safe Food for Canadians Regulations appears to be the same as that

under the Organic Products Regulations but is not specifically addressed. However, under the proposed Safe Food for Canadians Regulations **all** certificates expire 12 months after the date of issue.

The USDA NOP, in contrast, provides for **one** non-expiring Certificate of Conformity granted to the operator. This certificate includes all products and activities in the operation and does not expire until cancelled or surrendered.

7.2.2 Impact

The number and types of Certificate of Organic Conformity under the Organic Regulations and the proposed Regulations has created and will continue to create confusion in the Canadian organic industry. When coupled with the notion of "non-expiring" and "expiring" certificates (sometimes issued to the same operator) this system has become unmanageable.

The new notion that **all** certificates including product certificates, expire 12 months after issuance introduced in Sec 342(3) of the proposed Regulations exacerbates an already unmanageable situation.

7.2.3. Proposed Corrective Actions

It is proposed that the Organic Regulations be revised as follows:

1. The number and types of Certificates of Conformity be reduced to the original **single Certification of Conformity** which states <u>as a minimum</u>:

    a. the name of the operator,
    b. the products certified as organic and/or,
    c. the activities verified to be compliant with the Canada Organic Standards.

    <u>Rational</u>: The return to one Certificate of Conformity for both products and activities – the global organic certificate norm – will reduce the complexity and cost of initial certification and extension of certification. It will also reduce the opportunity for erroneous certificates or failure to certify all organic food chain activities on a continuous basis.

2. This Certificate of Conformity be issued to the **operator** of the organic production, processing, handling, trading or other (various) activity.

Rational: The prohibition of "Operator" certification under the Organic Products Regulations is related to a legal interpretation of the Canadian Agricultural Products Act. This restriction does not exist under the Safe Food for Canadians Act.

Operator certification is permitted by US, EU, Japan and other country organic regulations.

Operator certification enable the restoration of one Certificate of Conformity as is the global practice.

3. This single Certificate of Conformity lists:

    a. the **products** certified as organic and/or,
    b. the **activities undertaken** in the organic product food chain.
4. The Certificate of Conformity be designated as **non-expiring** until cancelled by a Certification Body or until voluntarily surrendered by the operator.

    Rational: The return to a non-expiring Certificate of Conformity – the global industry norm – will eliminate the plethora of negative potential impacts described above. It will also restore ISO 17065 compliance to the Canada Organic Regime.

7.3 The Expiring Certificate Issue

7.3.1 Description

The Organic Regulations as currently interpreted by the CFIA, has both non-expiring and expiring Certificates of Conformity (see also Section 7.2.1 above). The proposed Regulation specifies that all certificates expire 12 months after the date of issuance.

7.3.2 Impact

The "expiring certificate for activities" under the current Canada Organic Regime rules creates a plethora of actual and potential negative outcomes:

1. It is often physically impossible for Certification Bodies to conduct on-site verification, in-house evaluations, make certification decisions and issue extension certificates before certificates expire. Therefore, uncertified activities can and are occurring.

2. This already impossible situation is exacerbated when non-compliances, which require a response period for correction, are involved. The frequency and period of actual potential uncertified activities or lapsed certifications increases under this circumstance.
3. Finally, the notion of "lapsed certification" – either potential or actual – is not likely to curry favour with Canada's trading partners during the next rounds of Equivalency Arrangement renewal.
4. Given that producer certification is by far the dominant client group for most CBs and that most producer certificates expire at the same time – the last calendar quarter – CBs will be forced into overtime and multiple shift mode with temporary (potentially unskilled) support staff. The opportunity for error increases exponentially under such circumstances.
5. Organic processors and traders will be forced to purchase essentially uncertified produce or produce "covered" by the so-called "Letters of Good Standing." This "Letter" is a fifth type of Certificate of Conformity under the Canada Organic Regime. The use of this letter is not an acceptable substitute for a Certificate of Conformity and is not sanctioned by the CFIA.

7.3.3 Proposed Corrective Actions

Reinstate the industry norm and ISO 17065 compliant notion of non-expiring Certificates of Conformity in the Organic Regulations.

7.4 The "15 Month Pre-application" Rule

7.4.1 Description

The current Organic Regulations: Sec 13 requires that new producers of field crops and maple syrup submit their application at least 15 months before the day the product is intended to be marketed as organic. This peculiar requirement is further complicated by the 12-month pre-application only applicable to farm operators.

The proposed organic regulations in clause 341(3) apparently expands this requirement to include all new operator applicants. This rule has no basis in ISO or in organic science. The USA, EU, Japanese and other country regulations do not specify this 15-month pre-application period.

7.4.2 Impact

Canadian organic operators are placed at a disadvantage in the global organic trade environment.

The retention and expansion of this arbitrary rule in the proposed Regulations severely penalizes new entrants and unnecessarily retards the growth of the Canadian Organic Food sector.

7.4.3 Proposed Corrective Actions

The notion of a 15-month pre-application or waiting period between initial applications and initial marketing products must be deleted from the Canadian Organic Regime.

7.5 The "12 Month Pre-inspection Period" Rule

7.5.1 Description

The notion that a new farm operator seeking initial organic certification must apply for certification and be under the oversight of a Certification Body for at least 12 months before the first harvest of organic product was introduced in the Organic Regulations (12(1)). It appears to have been expanded to include all organic "food commodities" in 341(3) of the proposed Regulations.

7.5.2 Impact

This unusual and unnecessary rule has resulted in delayed certification and loss of income for numerous new organic farm operators. It also discourages new producer entrants. The extension of this rule to new organic food processors by the Safe Food for Canadians Regulations will exacerbate the economic losses associated with this unnecessary requirement.

7.5.3 Proposed Corrective Actions

It is proposed that all references to a requirement for the oversight of the last 12 months of the transition period by a Certification Body be deleted from the proposed Regulations, Canadian Organic Office manual and Canada Organic Office directives. Further, that at all future times clause 5.1.1 of the Canadian Organic Standard not be interpreted to mean that farm operators must apply for certification or be under the oversight of CB 12 months before the first harvest of organic products.

7.6 The Certification of "Handling, Storing and Conveying" Activities

7.6.1 Description

Section 341(2)(e) of the Safe Food for Canadians Regulations requires any person conducting activities such as handling, storing and conveying (transport) to hold a Various Activities certificate. Certification is currently not required for storage and conveyance (transportation).

Handling is not defined in the Organic Products Regulations or the Safe Food for Canadians Regulations. Handling under the USDA NOP is defined as all "preparation" activities.

The industry norm for organic storage and transportation (conveyance) facilities is to include these facilities in the operator's organic plan.

7.6.2 Impact

The new requirement for separate certification of the conveyance and storage infrastructure for packaged goods in the organic food chain creates a new and enormous financial and logistical burden on the Canadian organic industry. The magnitude of this requirement can be visualized by considering the thousands of trucks carrying organic goods on the North American highways each day! All of these would now need to apply for and maintain organic certification. Given that this is not an international requirement, it will place the Canadian organic industry at a significant competitive disadvantage.

7.6.3 Proposed Corrective Actions

It is proposed that storage and conveyance of packaged organic products be removed from certification requirement in the Safe Food for Canadians Regulations. The certification of such storage and conveyance by Canadian operators should be left as a discretionary option.

The certification of storage and conveyance of unpackaged organic produce be left under the jurisdiction of the operator's organic plan and hence Certification Body oversight via current standard operating procedures for such facilities.

It is proposed, firstly, that "handling" be defined in the Safe Food for Canadians Regulations and, secondly, that it replace the term "various activities" coined in Sections 344 and 345 of the same.

7.7 The "Sections 345 & 346" Clarity Issue - SFCR

7.7.1 Description

These clauses lack clarity and contain the notion of expiring certification discussed in Section 7.3 above.

7.7.2 Impact

Lack of clarity leads to confusion among and between Certification Bodies and operators. An expiring certificate of compliance has proven to be unmanageable. See also Section 7.2 and 7.3 above.

7.7.3 Proposed Corrective Actions

It is proposed that clause 345 and 346 of the proposed Regulations be rewritten in accordance with the proposed corrective action set out in Sections 7.2 and 7.3 of this White Paper.

7.8 The Small Operator Certification Issue

7.8.1 Description

The Canada Organic Regime as currently in force is designed for organic farms and processors with sufficient "critical mass" to handle the cost and paper work needed to obtain and sustain certified status. There are no exemptions for small, local operators and marketers. The cost of small operator certification to the operator and the Certification Body often is greater than that for large operations due to the often-larger number of products, production units (fields) and larger array of inputs encountered in small operations. The "window" for intra-provincial non-regulation of "organic" food and fibre trading is closing; therefore, all small, Canadian, organic operators ultimately will be forced to deal with the cost and complexity of annual certification to the Canada Organic Regime.

7.8.2 Impact

The continuing absence of provisions in the Canada Organic Regime for small organic operators with mostly local and often small or niche markets has and will continue to have numerous negative impacts including but not limited to:

1. excluding small organic operators from the organic industry;

2. forcing small operators to use other product descriptors such as “Natural”;
3. discouraging new but small organic farmers from entering the organic industry.

7.8.3 Proposed Corrective Actions

There are several possible solutions to the small organic operator certificate conundrum.

Several Canadian organic CBs have introduced “risk adjusted” organic verification certification programs for small operations trading intra-provincially and, in the short term, out of Canada Organic Regime scope.

The essence of these programs is biennial or triennial as opposed to annual on-site verification. This effectively reduces the annual cost of certification without a loss of organic integrity to the Canada Organic Regime .

It is proposed that a risk adjusted option for small farmers which entails biennial on-site verification be included in the Organic Regulations along with specific eligible criteria and safeguards as pioneered by the Certification Bodies already so engaged.

It is further proposed that a Task Force with small operators and Certification Bodies composition be established under the Organic Value Chain RoundTable or one of the national organic organizations to draft such a risk adjusted program for inclusion in the Canada Organic Regime, recognizing that this is a dynamic rather than static issue.

8.0 EQUIVALENCY ISSUES

8.1 The Deglobalization Movement

There is, at this time, global backlash against free trade agreements. Regardless of the merits and demerits of this movement, the potential impact on the Canadian organic industry, which largely depends on export trade, is huge.

Our Equivalency Arrangements with the US in particular may receive much harsher scrutiny at the next review event. Therefore, it is absolutely essential that the Canada Organic Regime and its integral components (See Section 1.2) are reviewed and revised to be fully equivalent to the USDA Organic Programme. As a minimum, the issues and proposed corrective actions in this document need to be considered.

8.2 Equivalency Negotiation Teams Issue

8.2.1 Description

The Canadian Government via its foreign trade group has thus far taken it upon itself to negotiate Organic Equivalency Arrangements without significant input from or interaction with the Canadian organic industry.

8.2.2 Impact

The result of negotiating without fundamental organic industry knowledge and support have been flawed organic Equivalency Arrangements. The most recent example is the Canada/EU arrangement which allowed EU operators to include ingredients from countries outside the EU but declined that essential right to Canadian operators. This had a major organic trade impact. Millions of dollars in exports have been lost. That flaw may or may not have been corrected in subsequent "cap-in-hand" renegotiations with the EU.

8.2.3 Proposed Corrective Actions

The Canadian Government mandates that at all future times, a knowledgeable organic trade expert must be included in Equivalency Arrangement teams. A request to the Canadian Organic Trade Association office is all that is needed.

8.3 The "No NOP, EU and JAS Certification in Canada" Rules

8.3.1 Description

The Canada Organic Office, during implementation of the Canada/US Equivalency Arrangement, requested that the USDA no longer permit certification to the National Organic Program (NOP) in Canada. This unilateral request did not anticipate the trade of goods to other international trading partners which only recognized the NOP seal, nor did it account for certification requirements of products outside the scope of the Canada Organic Regime.

Similarly, the Canada Organic Office, during implementation of the Canada/EU Equivalency Arrangement, requested that certification to the EU organic regulation no longer be permitted in Canada.

Likewise, at the Canada Organic Office's request, certification to the JAS in Canada is no longer permitted.

These “rules” have no basis in the Canada Agricultural Products Act, the Organic Products Regulations and NAFTA.

8.3.2 Impact

The negative impact on Canadian organic exports and the domestic food processing industry of these arbitrary rules have been and are huge. They can best be described as “self-imposed non-tariff organic trade barriers”. Untold millions of dollars in parts have been lost over the last decade.

Organic processors and traders are forced to engage in “work around” arrangements including processing Canadian organic food in the US instead of Canada.

Recent changes to the Canada/EU Arrangement inadvertently resulted in many Canadian operators no longer being eligible to ship to the EU under this arrangement. With no option for direct EU certification they are now effectively blocked from this market. An example of this impact was recently forwarded to Canada’s Trade Commissioner in Paris.

8.3.3 Proposed Corrective Actions

The self-imposed impediments to US, EU and Japanese organic trade described above must be removed at the earliest opportunity. Certification of processed Canadian organic products to the NOP, EU, JAS and other national organic programs, when required to gain access to markets outside of Canada, must be allowed and encouraged at all future times. There are also situations where certification of Canadian produce to the NOP, EU and JAS should be permitted; however, such produce must also be certified to comply with the Canada Organic Regime.

8.4 Maple Products Certification

8.4.1 Description

The COS’s include maple production standards which have been developed over many years. There are no specific maple product standards in the USDA NOP or in most other national standards. Therefore, equivalency agreement on this issue is technically impossible.

8.4.2 Impact

The absence of maple product standards in the USDA NOP and other standards creates an unlevel playing field which disadvantages the Canadian maple product industry which must comply with a rigorous standard.

8.4.3 Proposed Corrective Actions

1. The addition of maple products standards to Appendix 1 of Canada/USA Equivalency Arrangement.
2. In the alternative, remove maple products from any/all equivalency negotiations and arrangements.
3. Ensure that maple products imported into Canada comply with the Canada Organic Standards, i.e. are certified to the Canada Organic Regime via a CFIA accredited Certification Body.

8.5 The Canada/South Korean Equivalency Arrangement Issue

8.5.1 Description

The Canada/South Korean Equivalency Arrangements now in negotiation is focused on South Korea's definition of processed organic goods. Raw organic produce, e.g. Grain is not included in the current discussions.

8.5.2 Impact

The exclusion of organic produce from the negotiation terms of reference effectively "locks out" Canadian Organic certified raw, produce from the South Korean organic market. Canadian farmers are and will be forced to seek South Korean organic certification in Canada. As a result, this pending Canada/South Korean trade Equivalency Arrangement is of no value to Canadian organic farmers.

8.5.3 Proposed Corrective Actions

Revise the terms of reference of the Canadian/South Korean equivalency negotiation team to include raw, organic agricultural produce.

9.0 THE CHRONIC STANDARDS MAINTENANCE AND AMBIGUITY ISSUE

9.1 COS Maintenance Issue

9.1.1 Description & History

The Government of Canada, several decades ago, decreed that the Canadian General Standards Board be the custodian of the Canada Organic Standards. The industry (reluctantly) agreed. The Canadian General Standards Board took possession (via copyright) of the intellectual property voluntarily contributed to the Organic Standards by hundreds of individuals over many years.

The Canadian General Standards Board then superimposed upon the organic industry a standard maintenance system designed for human safety – i.e. engineered products such as residential water heaters – and not designed for food quality certification systems. It declined to modify and simplify this cumbersome and expensive system for a low risk food quality standard. The Canadian General Standards Board also insists that the Committee on Organic Agriculture include almost 100 members not counting several dozen Working Group volunteers. The result is inordinate complexity, lengthy and exorbitant cost; the latter, which has now reached $1,000,000 per event. The last event took more than two years to complete.

The five-year review event could cost substantially less and could take six months or less to complete if the process was managed differently.

The Government of Canada, the owner and custodian of the COSs which are referenced in the Organic Products Regulation of the Canada Agriculture Program Act and in the proposed Regulations, at each compulsory five-year event then requests that the industry fund part or (most recently) all of this huge cost. At the same time, it declines to recognize the $1,000,000 plus intellectual property, time and energy contributed by industry representatives at each event.

9.1.2 Impact

The ownership of the Organic Standards by the Government of Canada without responsibility for the largely self-imposed high maintenance costs places a $5 Billion emerging industry at unnecessary risk every five years. The recent threat to “archive” the Standards if the industry does not “pony up” the funds for the next event is alarming. The industry volunteers are regularly worn out by the review event which should take six months rather than two years.

The cyclical uncertainty associated with Standards maintenance undermines confidence in the organic industry at home and abroad. It worries existing organic operators and discourages new entrants from changing their business plans.

9.1.3 Proposed Corrective Actions

The Government of Canada, as regulator of the Canadian organic industry and owners of the Organic Standards, must unequivocally assume responsibility for the funding of the mandatory five-year review event. It must also recognize that the industry's voluntary, intellectual contribution to these review events have substantial financial value.

The Government can also reduce the cost of the five-year review event by:

1. Revising and reducing the self-imposed and unnecessary complexity and cost of the Canadian General Standards Board standard operating policies and procedures;
2. Imposing a financial limit on the review event;
3. Reducing the time frame for the event to a maximum of 6 months;
4. Streamlining the process.

As a minimum, there is an obvious need to establish an industry Task Force to investigate alternative and affordable ways and means of managing the Organic Standards. The Organic Value Chain roundtable could oversee this work. The organic aquaculture industry likely would also be interested in this concept.

An alternative to the funding uncertainty and hence industry instability cause by the cumbersome standards review system and its exorbitant cost is to privatize the standard and its review process. That is, deed the Standards' copyright back to the industry and let the industry retain one of the many commercial alternative standards creation and maintenance agencies to do the periodic reviews. This would also have the advantage of involving professional standard writers to more effectively minimize ambiguities in the Organic Standards.

9.2 The Permitted Substance List (PSL) Vetting Issue

9.2.1 Description

Throughout the 20-year history of the Canada Organic Standards, the Canadian General Standards Board has ignored repeated requests to "slim down" the Permitted Substances List by establishing a Working Group to apply the Criteria for Inclusion of Substances to substances "grandfathered" in at the out-set. Further, there are no "sunset" provisions for synthetic (non-organic) substances in the Standards. Other national programs such as the USDA NOP have sunset provisions for non-compliant substances.

9.2.2 Impact

Given that the Permitted Substances Lists (CAN/CGSB 32.311) now contain substances which contravene the Principles of Organic Production and the Criteria for Inclusion in the Permitted

Substances Lists, and further that the Canadian General Standards Board has not addressed this error, there is a serious ongoing risk of non-equivalence with Canada's international organic trading partners.

Naturally, there is an implicit erosion of confidence in the Canada Organic Regime at home and abroad caused by this regulatory flaw.

9.2.3 Proposed Corrective Actions

1. Immediately create a one-time Working Group to vet all the substances "grandfathered" into the standard relative to the current criteria.
2. Introduce "sunset" provision into the Canada Organic Standards maintenance system for substances which do not meet the inclusion criteria but are not yet commercially available in a compliant form.
3. Ensure that all future additions to the Permitted Substances Lists are properly vetted and "sunsetted" (if applicable) at the time of inclusion.

APPENDICES

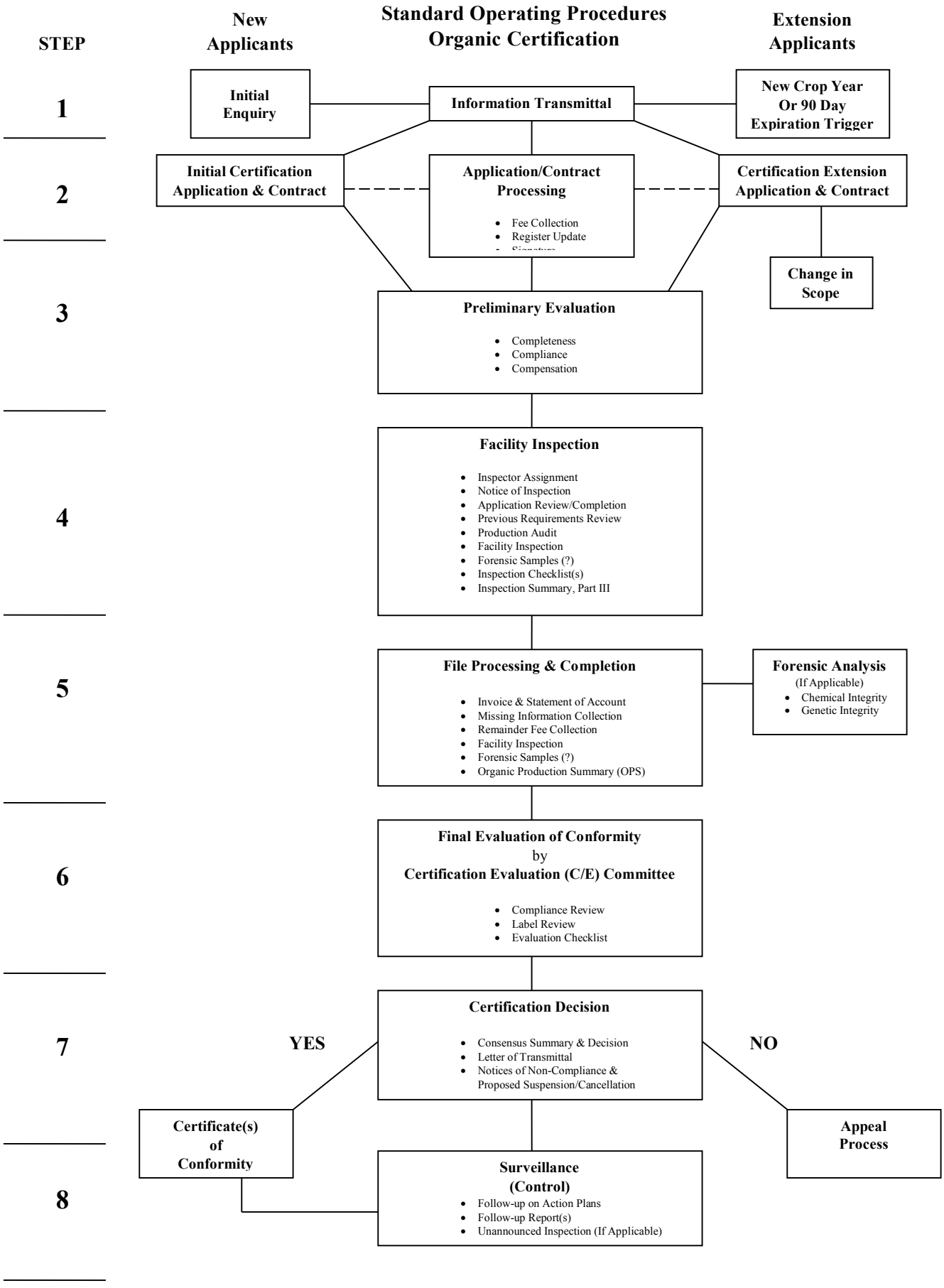
A. Schematic of COR ISO 17065 Compliant Organic Certification System

B. Documentation Requirements for Verification of Continued Organic Integrity under the Canada Organic Regime

C. An Innovative Concept for Funding and Oversight of the Canadian Organic Office

D. Directive 14-01 (Revised) Sampling and testing organic products

Appendix A: Schematic of COR Compliant Organic Certification System



Appendix B: Documentation Requirements for Verification of Continued Organic Integrity under the Canada Organic Regime

(Further explanation on the Memo re: Clarification on the Certification of Organic Products from February 24, 2015)

Overview

The *Organic Products Regulations, 2009* (OPR) are published under the *Canada Agricultural Products Act*, and cover the certification of organic products as well as related packaging and labelling activities, as opposed to the certification of organic operations or processes or service providers.

In certain situations, an operator may need to obtain documentation that provides assurance to third parties that the product they are handling or trading in continues to maintain its organic integrity.

The "family" of certification documentation

Because an organic product carries its certification until the next point of transformation operators may require slightly different types of documentation to attest to a product's organic status and integrity whether it is an organic product certificate, the certificate for labelling and packing an organic product, or an attestation of compliance for an operator transporting or storing organic products.

Though different in name, all of these forms of documentation can reasonably be considered part of the "family" of documentation which should be issued be a CFIA-accredited certification body (CB) attesting that a product is organic. For products and ingredients entering the Canadian market from abroad, Canada Organic Regime (COR)-documentation or certificates from equivalent regimes can meet this documentation requirement.

The Canada Organic Office (COO) Operating Manual requires all CFIA accredited CBs to accept the documentation issued by any CFIA-accredited CB as meeting the OPR requirements for maintenance of organic integrity; this includes Attestations of Compliance.

Types of documentation issued by the CBs to verify continued organic integrity under COR

Type of Documentation	Description
Organic Product Certificate	CBs shall issue documentation confirming the organic certification of a product (verified to be produced/processed in compliance with the Canadian Organic Standards) as per section 13 of the OPR. Product certificates do not expire however subsection 12(1) of the OPR requires that organic certification be applied for annually.
Organic Packaging and Labelling Certificate	CBs shall issue documentation confirming the organic packaging and labelling of a product (verified to be packaged and labelled in compliance with the Canadian Organic Standards) as per subsection 15(1) of the OPR. The Packaging and Labelling certificate remains in effect for period of 12 months beginning on the day on which it is granted as per subsection 15(2) of the OPR.
Attestation of Compliance	CBs may issue an attestation of compliance (service) confirming that the operator conducts activities in compliance with the Canadian organic standards (CBs verify that the operator and their activities comply with Canadian standards and fall within the scope of the OPR). Verification activities conducted by CBs should be in accordance of ISO 17065 and COO Operating Manual and similar to the two certifications listed above. The document issued following this verification should include the information elements as specified in the Attestation template. Products covered by an Attestation of Compliance may continue to bear the Canada Organic logo. CBs may issue Attestation of Compliance to operators confirming the organic integrity of a product which is not covered under the requirements for an Organic Product Certificate or Organic Packaging and Labelling Certificate (e.g. if the product is already certified organic and has not undergone transformation, or the operator's activity with the product, such as trade, does not require and Organic Product Certificate or Organic Packaging and Labelling Certificate.

Expiry/renewal of documentation

Type of document	Expiry/Renewal
Organic Product Certificate	Does not expire. A certificate must be issued for new organic product on an annual basis as per subsection 12(1) of the OPR.
Organic Packaging and Labelling Certificate	Remains in effect for a period of 12 months beginning on the day it was granted, as per subsection 15(2) of the OPR.
Attestation of Compliance	Remains in effect for a period of 12 months beginning on the day it was granted.

Example scenarios

#	Operator	Scenario	Type of Document
1	Farmer (primary producer)	The primary producer sells an organic product to a retailer or manufacturer as is.	Organic Product Certificate - Any transport or further handling of the product by the farmer and included in their organic plan is covered by this certificate.
2	Trader	The trader sells an organic product to a retailer (e.g. obtained from a farmer or manufacturer). The product has not been transformed but the trader wishes to show the organic integrity of the product has been maintained.	Attestation of Compliance* - The trader can sell this product under this documentation (e.g. as the organic integrity has been verified, the name and address of the supplier are not required to be disclosed to the buyer). ** Attestation of Compliance and Attestation of Service have the same meaning. For consistency purposes, the CBs should use Attestation of Compliance* - see NOTE 1
3	Trader	The trader sells an organic product to an export market with whom Canada has an equivalency arrangement and which requires a "Certification of Inspection", such as the European Union, Switzerland and Japan.	Attestation of Compliance AND Certificate of Inspection - The Attestation of Compliance is considered internal documentation under Canada's domestic COR and is not a Certificate of Inspection. The Certificate of Inspection must be based upon an Attestation of Compliance, and must be issued by the same Certification Body using the template provided by CFIA.

4	Trader	The trader sells an organic product to an export market with whom Canada has an Equivalency Arrangement (excluding the European Union, Switzerland and Japan)	Attestation of Compliance - The trader can sell this product under this documentation (e.g. as the organic integrity has been verified, the name and address of the supplied are not required to be disclosed to the buyer). - See NOTE 1
5	Trader	A trader, retailer or other operator obtains an organic product but changes its container (e.g. from bulk to single-package), changes its packaging, or provides a new label (i.e. changing or adding information to the original package).	Organic Packaging and Labelling Certificate - The operator can sell the product under this documentation (e.g. the name and address of the original supplier is not necessary to disclose on the packaging as long as the dealer's name and address are included), however it should carry the name of the CB granting the final Certificate of Packaging and Labelling to ensure proper traceability.
6	Retailer	A retailer purchases bulk product for sale in its store and back-fills the bins as levels get lower. These bins are labelled "organic" and carry the Canada Organic Logo.	Organic Packaging and Labelling Certificate - See NOTE 2 - See NOTE 3
7	Retailer	A retailer purchases bulk product for sale in its store and re-packages (e.g. makes individual-sale units available). These packages are labelled "organic" and carry the Canada Organic Logo.	Organic Packaging and Labelling Certificate - See NOTE 2
8	Retailer/brand owner labelling prepackaged products under a private label	A retailer or brand owner buys prepackaged products via third-party producers or manufacturers and markets them under their own brand of product.	Organic Packaging and Labelling Certificate - The retailer can sell the product under this documentation (e.g. the name and address of the original supplier is not necessary to disclose on the packaging as long as the dealer's name and address are included), however it should carry the name of the CB granting the final Certificate of Packaging and Labelling to ensure proper traceability.
9	Manufacturer (processor)	A manufacturer buys organic product from a trader or producer and transforms it to a new product.	Organic Product Certificate - Any transport or further handling of the product by the manufacturer and included in their organic plan is under this certificate.

10	Foreign-based certified operation (e.g. NOP)	Foreign-based certified operation (e.g. NOP) labelling/commissioning a product from a Canadian operator (co-packer) under their brand, for sale in Canada.	Organic Packaging and Labelling Certificate - The retailer or "brand" owner can sell the product under this documentation (e.g. the name and address of the original supplier is not necessary to disclose on the packaging as long as the dealer's name and address are included), however it should carry the name of the CB granting the final Certificate of Packaging and Labelling to ensure proper traceability.
11	Distributor	The product has not been transformed and the distributor wishes to show the organic integrity of the product has been maintained.	Attestation of Compliance - The trader can sell this product under this documentation (e.g. as the organic integrity has been verified, the name and address of the supplier are not required to be disclosed to the buyer as long as the dealer's name and address are included). - See NOTE 1
12	Off-site services	Off-site service providers (e.g. slaughterhouse, transport, storage, seed cleaning, etc.) who perform contractual work for operators with certified organic product.	Attestation of Compliance - Issued in accordance with section C.11 of the COO Operating Manual.
13	On-site services or equipment (e.g. mobile juicers)	A certified operation (e.g. a farm) obtains (through lease or loan) equipment or has services performed on-site, and ownership of the organic product continuously rests with the organic product certificate holder.	None - If the farm plan includes this situation, and the CB is able to verify compliance to the standards, including cleaning requirements, then the equipment or service may be covered by the original Organic Product certificate. OR Attestation of Compliance - Where the above is not applicable, an attestation of compliance can be issued in accordance with section C.11 of the COO Operating Manual.

NOTE 1:
Traders or distributors may voluntarily apply for an attestation of compliance however they can still trade in organic products without attestation of compliance, provided that organic integrity has not been compromised and the full documentation chain for these products is on hand and provided as required by either the certification body of the CFIA inspectors.

NOTE 2:

Retailers who choose to blend, further process, package or label organic products but choose not to use the Canada Organic Logo, and do not cross provincial lines, are not required to obtain certification under the federal system. The Canada Organic Retailing Practices Guide is recommended for best management practices in such situations. However, in certain provinces, the retailer may have to obtain certification under a provincial regime.

NOTE 3:
In cases of blending, roasting, the addition of ingredients, or other transformation, the Canadian operator must obtain an Organic Product Certificate under the COR.

Appendix C: An Innovative Concept for Funding and Oversight of the Canadian Organic Office

Background

The Canadian Organic Office (COO), as originally established, was staffed, funded and overseen by the CFIA. Given the CFIA's abandonment of this highly effective and essential body, this is perhaps a need for an innovative and lasting alternative administrative structure and funding arrangement for the COO.

COO Restoration and Renewal

Firstly, it is proposed that the COO be permanently restored as a "tightly knit group" within AAFC. Secondly, that the staffing and budget for the COO be expanded to adequately meet the current needs of the Canadian organic industry and that future staffing and funding needs be reviewed on a periodic basis. Thirdly, that the Terms of Reference of the COO be set out in the OPR or the proposed SFCR.

COO Funding and Oversight

It is further proposed that the benefactors of the COR and the COO need to get involved in the funding of the COO, and in exchange for that funding, a right of oversight of the COO and its functions. In essence, a 50/50 tax-payer/industry funding and oversight arrangement needs to be considered.

The Next Step

Given even "luke-warm" acceptance of the merits of this proposal, there is a need to establish a Task Force under the OVCRT to assess alternative ways and means of permanently restoring the COO as part of the COR (or proposed CORS).

Appendix D: Directive 14-01 (Revised) Sampling and testing organic products

Date: December 21, 2016 2nd Revision

Canadian Food Inspection Agency
Canada Organic Regime
1400 Merivale Road
Ottawa, Ontario, Canada, K1A 0Y9

1.0 Purpose and Scope

This directive specifies the responsibilities of Certification Bodies (CBs), accredited by the Canadian Food Inspection Agency (CFIA), regarding the sampling and testing of organic products.

2.0 Authority

Reference documents:

- *The Organic Products Regulations, 2009* (OPR)
- *Canadian General Standards Board General Principles and Management Standards CAN/CGSB 32.310 (Canadian Organic Standards) and the Permitted Substances List CAN/CGSB 32.311 (PSL)*.
- *The Canada Organic Regime (COR) Operating Manual*
- *Pest Control Products Act* (S.C. 2002, c. 28)

3.0 Background

Under the *Organic Product Regulations* (OPR), CFIA accredited Certification Bodies (CBs) must suspend a product's certification when the substances used in the production and processing of the product are other than those set out in the Permitted Substances Lists (PSL) or if the agricultural product comes in contact with substances other than those set out in the PSL (s.20).

Compliance in regards to prohibited substances must be verified through sampling and testing when there is a reason to suspect the presence of a prohibited substance as outlined in C.2.3.16; and C.2.3.18 and C.2.3.19 of the COR Operating Manual.

The CFIA also samples and test organic products as part of the National Chemical Residue Monitoring Program (NCRMP). The NCRMP is responsible for monitoring the food supply for chemical residues and contaminants, and evaluating compliance with

maximum residue limits (MRLs), tolerances and maximum levels established by Health Canada.

Health Canada's Pest Management Regulatory Agency (PMRA) is responsible for the registration and regulation of pesticides in Canada including the establishment of Maximum Residue Limits (MRLs) under the *Pest Control Products Act* (PCPA).

4.0 Requirements to be included in CB procedures for sampling and testing

Section C. 7.15 of the Canada Organic Regime (COR) Operating Manual requires the CBs to document their sampling and testing requirements.

The following requirements should be incorporated by the CBs into their existing procedures to ensure consistency in the implementation of the Canada Organic Regime:

4.1 Criteria to determine which products or operations are subjected to sampling and testing

Based on a documented risk assessment, the following minimum criteria are likely to trigger sampling:

- Type of product (e.g. susceptibility to disease or pests or usually high uses of pesticides in conventional systems);
- Local geography (e.g. lay of land, buffer areas, water supply, presence of neighbours and types of neighbouring land uses, nearby spray operations);
- Complaints or information previously received regarding the potential use of prohibited substances;
- Detection of chemical residues; or
- Signs of prohibited substances.

Detection of chemical residues and/or signs of prohibited substances will always require sampling and testing.

4.2 Description of the sampling techniques

The sampling techniques should be based on the specific commodity to be sampled including details on the sample selection, sample size, sampling equipment and sample submission. CBs should consider referring to Codex Alimentarius Commission (Codex) for information on recommended methods of sampling for the determination of chemical residues as guidance.

4.3 Sample submission information

The CBs samples should include the following information:

4.1.1 Operator name and address
4.1.2 Date of sampling
4.1.3 Type and identity of product
4.1.4 Specific location of sampling (e.g. a particular field, greenhouse, or part of a facility)
4.1.5 Identifying numbers (e.g. lot number, greenhouse number, production line)
4.1.6 Additional comments (e.g. reasons for suspicion of contamination)

4.4 Information on when, where and how samples should be submitted

All samples should be submitted to laboratories for testing as soon as possible but always according to related laboratory protocol. CBs are responsible for maintaining the chain of custody of samples prior to submission to the laboratories. Laboratories must hold current accreditation to ISO/IEC 17025: 2005, *General Requirements for the Competence of Testing and Calibration of Laboratories* and for which the scope of accreditation allows for the testing of the specific substance.

4.5 Documentation and record keeping

CFIA accredited CBs must maintain records to demonstrate that they conduct chemical residue sampling and testing of their operator's products and follow up on chemical residue results that were forwarded to them for action.

4.6Sampling equipment and training

The CBs are responsible to ensure that the Verification Officers (VOs) are trained on how to sample, label, and store products under proper chain of custody until samples are submitted for testing.

The CB shall ensure that the VOs are furnished with the proper sampling equipment at the time of the inspection as per specific sampling protocols provided by the laboratory.

5.0 CB Follow-up Actions on Chemical Residue Results

5.1 Follow-up on chemical residue results that are received from the CFIA

The CFIA forwards all chemical residue detection results from the NCRMP, with compounds identified that are not permitted by the PSL, to the CBs for follow-up through the Conformity Verification Bodies (CVB).

In addition to a follow-up by the CB, if residues are detected in excess of the MRL, CFIA inspection staff will follow-up on the detection as a safety issue.

Detections of chemical residues below the MRL are sent to the CB to follow up with the organic operator and to investigate the cause of the contamination. Based on the investigation, the CB will potentially apply enforcement actions (e.g. suspension, cancellation) as per clause 20 of the OPR.

5.2 Follow-up on results from samples taken by the CBs which show chemical residues

As per C.2.3.16; and C.2.3.18 and C.2.3.19 of the COR Operation Manual, when there is a reason to suspect that an agricultural input or product has come into contact with a prohibited substance, method or ingredient in the production and handling of organic products, the CB shall require pre-harvest or post-harvest testing of any agricultural input used or agricultural product to be sold, labelled or represented as being in compliance with the requirements of the Canadian organic standards.

CBs shall immediately inform the CFIA of any chemical result which exceeds the MRL and a product recall is initiated.

5.3 CB actions when chemical residues greater than 5% of the MRL or multiple types of residues at any level are detected

- The CB shall immediately inform the operator of the result and schedule an inspection to determine why chemical residues arepresent.
- If the product in question is still available at the operation, the CB shall prohibit the operator from marketing that affected product (lot/batch) as organic or use the Canada Organic Logo while the investigation ison-going.
- As per clause C 2.3.18 of the COR Operating Manual, the CB shall conduct additional sampling as part of theinvestigation.
- If the presence of prohibited chemicals is found to be no fault of the operator only the products with chemical residues detected shall lose their certification status.
- Deliberate use of prohibited chemicals by an operator shall result in the CB initiating the cancellation process as per clause 20 of theOPR.
- The CB shall report findings to the CFIA through their CVB by using the standardized reporting template.

5.4 CBs actions when chemical residue are detected at 5% or below of the MRL (single type of residue)

- The CB shall inform the operator that chemical residues are present.
- As per clause C.2.3.18 of the COR Operating Manual, the CB shall sample for chemical residues at the operation no later than the next scheduled inspection.
- If the inspection and the sampling indicate continued presence of prohibited chemicals under 5% of the MRL the CB shall initiate an immediate investigation.
- Deliberate use of prohibited chemicals by an operator shall result in the CB initiating cancellation of the operation as per clause 20 of the OPR.
- The CB shall report findings to the CFIA through their CVB by using the standardized reporting template.

6.0 Annual Reporting

CBs shall report the number of samples and the results of chemical residue testing in their annual reports submitted to the CVBs.

7.0 Fees

The Operator is responsible for ensuring that their products meet *The Organic Production Systems General Principles and Management Standards*. A sample testing positive for one or more chemical residues may result in further testing or an inspection of the operator facilities/premises to determine their ability to be in compliance with *The Organic Production Systems General Principles and Management Standards*. In these cases, the Certification Body may recover from the applicant the fee payable for each inspection.

8.0 Conformity Verification Body (CVB) responsibilities

CVBs shall review the CB sampling and testing procedures and records during the on- site audit of the CBs.

9.0 Inquiries

Inquiries concerning this directive should be addressed to the Canada Organic Regime email address: OPR.RPB@inspection.gc.ca