



October 5, 2020

Jenny Tucker, Ph.D.  
Deputy Administrator  
National Organic Program  
USDA-AMS-NOP  
1400 Independence Avenue, SW  
Room 2642—So., Ag Stop 0268  
Washington, DC 20250-0268

**Docket Number:** AMS-NOP-17-0065

RE: National Organic Program's (NOP) Strengthening Organic Enforcement Proposed Rule

Dear Dr. Tucker,

Thank you for this opportunity to provide feedback on the Agricultural Marketing Service (AMS) National Organic Program's (NOP) Strengthening Organic Enforcement (SOE) Proposed Rule. We welcome the opportunity to comment on the largest single piece of rulemaking since the implementation of NOP in 2002.

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing over 9,500 organic businesses across 50 states. Our members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

***Organic Integrity is the lifeblood of the organic industry***

The organic industry is one of a very few bright spots in the U.S. agricultural economy. In the thirty years since the Organic Foods Production Act was enacted, organic has grown from \$1 billion to a bustling \$55 billion in U.S. consumer sales. It is now possible to purchase an organic food product in nearly every category in the grocery store. The U.S. Department of Agriculture (USDA) Organic label is highly trusted by over 75% of families. Organic products are in the kitchens of more than 82% of American households. But this trust comes as a result of consumers' belief in the veracity of the organic seal. Strong standards reinforce trust that products bearing the USDA Organic label are held to a high-quality, definable, measurable set of standards with robust oversight and enforcement. The ongoing work of NOP to strengthen the enforcement of the organic standards and to deepen the rigor of oversight across the supply chain is critical to protecting organic integrity, ensuring a level playing field for all organic market participants – in the U.S. and abroad – and bolstering consumer trust in the organic label. The integrity of the organic certification process from farm to table is the lifeblood of the organic industry.

***Preventing the Organic Fraud Opportunity***

Food fraud, or the act of defrauding buyers of food or ingredients for economic gain, has plagued the food industry throughout history. Although the act of adulterating food for economic gain dates back to at least the Middle Ages, its presence in the global organic supply chain is more recent, and poses a significant threat to the integrity of the organic brand. Simply put, fraud cannot be tolerated in the organic system, inside or

outside of the United States. Anytime there is fraud, it takes value out of the organic chain, and hurts organic farmers wherever they farm.

For the past three years, OTA has prioritized significant time and resources into actions that will help mitigate and prevent organic fraud. Our work ranges from our successful legislative efforts in the 2018 Farm Bill that authorized key provisions of this proposed rule, to our work with National Organic Standards Board (NOSB) and our member task force to help inform this proposed rule, to our major private-sector initiative that has evolved into an industry-wide fraud prevention program, called *Organic Fraud Prevention Solutions*. The program provides businesses with a systematic approach for carrying out a fraud vulnerability assessment and developing an Organic Fraud Prevention Plan. OTA thanks NOP for recognizing our program in the SOE as a private sector initiative that will help operations develop best practices to detect and prevent organic fraud. Certified operations, in fact, do have first-hand knowledge of their supply chains, and are often better able to detect and prevent organic fraud than a third party. OTA remains committed to proactively confronting the fraud challenge with effective solutions, and doing our part as leaders of the organic industry to prevent the organic fraud opportunity.

### ***OTA Positions and Recommendations***

OTA maintains its position that everyone plays a role in preventing organic fraud. We applaud NOP for its major undertaking in drafting this proposed rule and for placing emphasis on strengthening supply chain traceability systems and organic fraud prevention plans. We also thank NOP for constructing a proposed rule that embraces shared responsibility across all entities in the supply chain, and for building in the use of risk-assessment to guide supply chain audits. Establishing new requirements for data reporting will create comprehensive data transparency tools for better understanding organic production and trade dynamics. The new grower group standards will finally provide sound and consistent certification practices for millions of organic farmers worldwide. The Strengthening Organic Enforcement Proposed Rule will undoubtedly have significant and far-reaching impacts on the organic sector. Our focus now must be on swiftly moving to a final rule, and providing the support and resources needed to ensure successful implementation.

### ***NOP General Questions***

OTA is submitting individual comments on each topic in the proposed rule to help NOP in its process of finding and navigating our positions and recommendations. We have also submitted all of our comments bundled into a single PDF including this cover letter. In addition to answering the questions NOP is asking on each topic, we offer the following responses to the general questions NOP is asking.

1. **The clarity of the proposed requirements. Can certified operations, handlers, and certifying agents readily determine how to comply with the proposed regulations?** No, not in several cases. OTA finds the preamble to be mostly clear in explaining the intent and requirements of the proposed rule. However, the intent and meaning are not adequately translated in the proposed rule text itself. We are concerned in many cases that certified operations and certifying agents will not be able to readily determine how to comply with the regulations without the assistance of the preamble. In some cases, both the preamble and the proposed rule require clarification. We have addressed these instances and provided recommended solutions in our comments on each topic.
2. **The implementation timeframe. AMS is proposing that all requirements in this proposed rule be implemented within ten months of the effective date of the final rule (this is also one year after publication of the final rule).** OTA supports implementation of the Strengthening Organic

Enforcement Proposed Rule at the earliest feasible opportunity. In most cases, NOP's proposed one-year timeframe after publication of the final rule is suitable based on our assessment. However, certain sections of the Proposed Rule will require significant preparation in systems and resources for operations and certifiers to be in compliance. We identify our recommended implementation timeframes in our comments on each topic, and also provide a summary in our comment titled 'Implementation Timeframe.'

3. **The accuracy of the estimates in the Regulatory Impact Analysis and Regulatory Flexibility Analysis, which describe the expected costs of this proposed rule on all affected entities and on small businesses, respectively.** OTA was not able to fully analyze the Regulatory Impact Analysis and Regulatory Flexibility Analysis due to the short comment period and the substantive content of the proposed rule. OTA strongly agrees that the benefits of this Proposed Rule far outweigh the costs. To support operations in taking on the costs that will be needed to come into compliance with the rule, we urge USDA to continue offering the Organic Certification Cost Share Program. As certification costs have increased over the years and may rise due to the requirements of the proposed rule, it is critical that USDA provide cost share assistance at the maximum amount allowed by federal law which is currently 75% or \$750 per scope for certified operations.
4. **Are there alternatives to regulations, or less stringent requirements, that could achieve the same objectives as this proposed rule?** Yes, in many cases additional detail or explanation is needed that would best be addressed in Guidance. Given the broad diversity of the organic supply chain, it is critical that the NOP regulations are uniform in nature to ensure organic integrity while, at the same time, flexible enough to work for various organic operations up and down the supply chain. In our analysis of the proposed requirements, we continued to find that the risk of fraud and/or the risk to organic integrity can be very different (low- to high-risk) depending on where in the supply chain the handling is taking place (e.g. lower, middle or upper echelon), the type of commodity being traded (e.g. produce vs. dairy), whether the product is packaged or unpackaged and the nature of the packaging (open tote vs. tamper-proof final packaging). In some cases, a "one-size-fits-all" approach does not make sense to meet the end goal - traceability, fraud prevention and organic integrity. Accordingly, we have provided recommendations, per topic, on where Guidance can serve as a supplementary tool to support compliance with the regulations.
5. **How will certifying agents cover the costs of additional actions required under this rule, such as the required unannounced inspections and the issuing of NOP Import Certificates? Will certifying agents charge fees that are consistent for expanded handlers, brokers, importers and exporters?** OTA appreciates these extremely important questions and refers to certifying agents themselves for the answers, as we recognize that each agent has their own fee structure. We also refer to our comments on cost-share certification and the importance of continued congressional support for the National Organic Program. OTA does not take lightly the magnitude of this rule and the tremendous amount of energy and resources it will take to not only implement the rule but maintain it in the foreseeable future.

### ***Continued Congressional Support for the National Organic Program***

Given the tremendous growth rate of the organic industry over the past several years, accurate data for the production, pricing and marketing of organic products is essential to maintaining stable markets, identifying fraud, creating risk management tools, tracking production trends, and increasing exports. Investments in

technology and access to data to improve tracking of international organic trade will provide the necessary information to ensure a transparent marketplace. OTA has consistently worked with Congress to advocate for increased funding for the National Organic Program to collect data, as well as make important investments in technology to ensure the data is accessible. In both the 2014 and 2018 Farm Bills, OTA successfully advocated for Congress to include \$5 million in mandatory funding to support technology upgrades at NOP. The funding was used to create the Organic Integrity Database (OID) and recent funding included in the 2018 Farm Bill was provided for NOP to make upgrades and maintain OID while also investing in technology to set up a tracking system for electronic import certificates through the U.S. Customs and Border Protection's Automated Commercial Environment (CBP-ACE) system.

NOP's annual budget is provided by Congress through discretionary appropriations. Over the past five years, NOP funding has increased by more than 30% due to OTA's advocacy and in the 2018 Farm Bill. OTA also secured an authorization to increase NOP's budget by 10% per year to keep pace with market growth. Continued Congressional support for NOP funding is vital to ensure that the requirements of the proposed rule related to data collection are achievable, and the federally operated databases upon which the SOE Rule relies (OID & CBP-ACE) can continue to provide the critical functionality and data that the industry requires.

***Continuous Improvement in Advancing Organic Standards***

We commend NOP for incorporating many outstanding recommendations of the NOSB into this Strengthening Organic Enforcement Proposed Rule that had not been previously implemented. Advancing these recommendations through rulemaking is critical for ensuring uniform and robust standards, a healthy market for organic products, and credibility of the USDA Organic label. There is still more work to do, as there are 20 NOSB recommendations from the past 10 years that have yet to be implemented that would address areas of the organic regulation where clarity and uniform implementation are critically needed, such as animal welfare, apiculture, and greenhouse production standards. Continuous improvement in advancing organic standards is essential for building consumer and industry trust in the USDA Organic label. We look forward to working with USDA to strengthen the public-private partnership, and ensure success of the USDA Organic label into the future.

On behalf of our members across the supply chain and the country, the Organic Trade Association thanks USDA and the National Organic Program for your commitment to protecting organic integrity.

Respectfully submitted,



Gwendolyn Wyard  
Vice President, Regulatory and Technical Affairs



Johanna Miranda  
Farm Policy Director

cc: Laura Batcha  
Executive Director/CEO  
Organic Trade Association

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