

Date: October 5, 2020

Docket: AMS-NOP-17-0065

Re: Strengthening Organic Enforcement Proposed Rule – Amendments Considered but not included in the Proposed Rule

Thank you for this opportunity to provide comment on the United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) National Organic Program (NOP) Proposed Rule on Strengthening Organic Enforcement.

The Organic Trade Association 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 a cover letter. This comment addresses Section #20: Additional Amendments considered but not included in this Proposed Rule.

Packaged Product Labeling

NOP is seeking comments on the following questions regarding private-labeled organic products and how amending the labeling requirements of §§ 205.303 – 205.304 may improve organic integrity and transparency, and facilitate the verification and traceability of organic products.

1. ***For private-label packaged products, which certified operation(s) should be listed on the retail label (brand name/distributor, contract manufacturer, or both)?***

The choice of either handler or distributor should be determined by whichever entity is the most appropriate point of contact. In all cases, the certifying agent displayed on the label should be the certifying agent of the certified operation listed on the label. The name of the handler or distributor and its certifying agent should also match the information reported in the Organic Integrity Database. This approach provides a transparent direct route for identifying the appropriate point of contact, connecting the physical product to its organic certificate, and supporting product traceability.

2. ***Should the certifying agent listed on a label always be the certifying agent of the certified operation listed on the label (i.e., should the certifying agent match the operation)?***

Yes. See answer above.

3. ***Should listing contract manufacturers on labels be mandatory?***

No. It should be optional. OTA does not support a mandatory listing of the manufacturer on the label. There should only need to be one certified operation and one certifying agent.

4. *What terminology should be used to describe private-labeled organic products?*

Private Label Organic Products.

5. *What terminology should be used to describe the operations involved in packaged product or private labeling (e.g., brand name manufacturer, contract manufacturer, and distributor)?*

Private Label Brand or Distributor (Retailer) / Brand name manufacturer or contract manufacturer (Handler)

Expiration of Certification

NOP considered (but did not include in proposed rule) an amendment in which an operation's certification would expire on an annual basis if the operation did not submit fees and update its certificate of organic operation. NOP is seeking comments on the following questions regarding expiration of certification:

1. *How might annual expiration of certification improve organic integrity?*
2. *What are the limitations of requiring expiration of certification?*
3. *What minimum requirements must be met before renewing certification?*
4. *Could an operation with unresolved adverse actions renew certification?*
5. *Would a grace period be appropriate for operations that failed to renew by the expiration date? If so, what length grace period would be appropriate?*
6. *What process should exist for an operation to regain organic certification should it allow its certification to expire?*
7. *Should certifying agents notify certified operations of their upcoming expiration of certification?*

OTA does not support an amendment that would cause an operation's certification status to automatically expire on an annual basis if the operation did not submit fees and update its certificate of organic operation. This system would create administrative and recordkeeping burdens without any increased protection to organic integrity.

OTA supports the current process of certification which allows organic certification to continue until certification surrendered, suspended, or revoked. The current process ensures that operations have due process. We also recognize that it is essential to strike a balance between due process and efficiency to minimize the amount of time that operations are able to sell product as organic while it exercises its right to due process. We strongly encourage NOP and certifying agents to respond to adverse actions in a timely manner.

Fees to AMS and Oversight of Certifying Agents' Fees

NOP is seeking public comments on how fees in NOP could strengthen testing and enforcement across all stakeholders to ensure that NOP keeps pace with the rapid growth and better serves the industry. This request for feedback is preceded by the following statement:

Since the final rule establishing the National Organic Program (NOP) was first published in the Federal Register in 2000, the production, marketing, and sale of organic foods has undergone tremendous growth. The proposed rule is intended to strengthen enforcement of the USDA organic regulations through many actions, including strengthened certification processes and coverage of importers, brokers, and traders of organic products. Section 2107 (a)(10) of the Act allows the NOP to include fees from producers, certifying agents and handlers. AMS periodically reviews the fees for accreditation and accreditation services to ensure that they are in compliance with Circular A-25.60 AMS also oversees the NOP fees that certifying agents and others charge for their services.

OTA does not support a user fee model. A user fee model and/or increased cost in accreditation fees would increase costs to certifying agents and these costs would be passed on to certified operations. NOP is a federal program under USDA, and Congress has consistently provided annual funds to NOP for enforcement and oversight of the organic program. NOP's budget has doubled in the last five years for this purpose, and the farm bill includes an increase in the authorization of NOP funding to keep pace with industry growth year after year. OTA maintains that funding should continue to come from congressional appropriations. NOP should make publicly available a detailed breakdown in their yearly budget outlining how federal funding is used before any further consideration or discussion of increasing user fees.

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

Respectfully submitted,



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