

**Date:** October 5, 2020

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

**Re: Strengthening Organic Enforcement Proposed Rule – Imports to the United States (Import Certificates)**

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 comments on each individual topic separately to help NOP in its process of finding and navigating our positions and recommendations. We have submitted all of our comments bundled into a single PDF including a cover letter. This comment addresses Section #2: Imports to the United States.

**Summary of the Organic Trade Association’s (OTA) Positions and Recommendations**

- OTA supports the expanded use of electronic import certificates to support supply chain traceability and import data transparency.
- OTA recommends that AMS aggregates and reports data from the CBP-ACE system to meet the need for reliable comprehensive data on organic imports that is not currently provided by HTS codes.
- OTA supports the allowance of equivalent data systems to be used as a substitute for NOP Import Certificates provided that the same data is able to be collected and is able to (and required to) be uploaded to the CBP-ACE system.
- OTA recommends that NOP clarify which party is responsible for uploading the Import Certificate (or equivalent) into the CBP-ACE system.
- OTA recommends revisions to the proposed definitions of *organic exporter* to ensure clarity and alignment of the exporter’s activities under the definition of *Handle* as proposed in Section #1 of the Proposed Rule.
- OTA does not support the 30-day timeframe for certifiers to issue certificates as written in the proposed rule because it is not tethered to the CBP’s deadline for uploading data into the ACE system, nor the importer’s responsibilities upon receiving the shipment.
- OTA recommends that certifiers issue valid NOP Import Certificates for compliant shipments as soon as possible, ideally upon arrival of the physical shipment at the U.S. Port of Entry. However, the procedures and deadlines for requesting and issuing NOP Import Certificates need to accommodate various modes of transportation and frequencies of shipments (particularly perishable, high frequency and/or short-notice shipments arriving by ground transportation from Mexico and Canada), balanced with certifier’s operational capacity, without impeding legitimate trade flow or compromising organic integrity and enforcement capabilities. We recommend that NOP issue guidance to explain the procedures and ideal deadlines for requesting and issuing NOP Import Certificates.

- OTA recommends the implementation of this section of the proposed rule (with OTA’s requested revisions and guidance) using a phased approach that accommodates the increased resources needed for certain types of imports: two years from publication of final rule for shipments by ground transportation from Mexico and Canada; one year from publication of final rule for all other imports. We also recommend that NOP completes a successful pilot test of the new electronic organic import certificate before the final rule is fully implemented.

## **Background**

Organic import certificates are a type of transaction certificate that contain detailed information about the quantity, origin, and organic status of imported products. The purpose has been to provide trackable and auditable documentation to demonstrate organic compliance and to support investigations of misrepresented product. Currently, NOP only requires organic import certificates for certain countries of origin as required by equivalency arrangements such as EU, Switzerland, Japan, South Korea, and Taiwan. NOP’s current import certificate form<sup>1</sup> and instructions<sup>2</sup> are available in the NOP Handbook.

This provision of the Strengthening Organic Enforcement Proposed Rule is specifically mandated by the 2018 Farm Bill. In preparation for implementation, NOP developed and launched a new electronic system<sup>3</sup> in April 2020 for filing organic import certificates as a voluntary option for through the U.S. Customs and Border Protection’s Automated Commercial Environment (CBP-ACE) system. This system would become mandatory upon implementation of the Strengthening Organic Enforcement final rule.

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<sup>1</sup> <https://www.ams.usda.gov/sites/default/files/media/NOP%20Import%20Certificate.pdf>

<sup>2</sup> <https://www.ams.usda.gov/sites/default/files/media/NOP%20Instructions%20for%20completing%20import%20certificate.pdf>

<sup>3</sup> <https://www.ams.usda.gov/services/organic-certification/international-trade/Electronic-Organic-Import-Certificates>

## NOP Questions

**1. *Is the 30-day timeframe for certifying agents to review and issue an NOP Import Certificate appropriate?***

No. This timeframe is not tethered to the CBP’s deadline for uploading data into the ACE system (within 10 calendar days after shipment physically enters the U.S.), nor the time when the importer needs to conduct its responsibilities (upon receiving a shipment with organic products). For more information, see OTA’s Positions & Recommendations below.

**2. *How could the mode of transportation and frequency of shipments affect the use of the NOP Import Certificate?***

NOP currently requires import certificates to accompany imports from some countries of origin. However, the new dynamic of using imports certificates for shipments arriving by ground transportation from Mexico and Canada is very different in comparison to imports arriving from countries that currently use NOP Import Certificates. For more information, see OTA’s Positions & Recommendations below.

## OTA’s Positions and Recommendations

- **OTA supports the expanded use of electronic NOP Import Certificates to support supply chain traceability and import data transparency.** The proposed rule is effective to implement the provisions of the 2018 Farm Bill and address findings from the USDA Office of Inspector General in 2017 Audit Report<sup>4</sup> relevant to the topic of import certificates (Finding #2 – NOP Organic Import Documents Were Not Verified At U.S. Ports of Entry; Finding #3 – Controls Over Organic Products Fumigated at U.S. Ports of Entry were Inadequate).
- **OTA recommends that AMS aggregates and reports data from the CBP-ACE system to meet the need for reliable comprehensive data on organic imports that is not currently provided by HTS codes.** The U.S. is the largest organic market in the world, yet our current data tracking systems only account for a fraction of total imported organic products. The USDA Global Agricultural Trade System (GATS) covers trade data, and organic products are only tracked if the product has an organic-specific Harmonized Tariff System (HTS) code. Each of these codes is established in response to a formal submission request to the U.S. International Trade Commissions. The Organic Trade Association has submitted all applications for organic HTS codes in existence. To date, there are very few (less than 47) HTS codes for

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<sup>4</sup> <https://www.usda.gov/sites/default/files/01601-0001-21.pdf>

organic-specific products<sup>5</sup>. Although this data can help understand some import trends for some organic products, it is not sufficient for a complete understanding of organic trade. Global organic trade is expanding, and our industry needs reliable and consistent information about which organic products are entering the U.S. and from which countries. The data collected from NOP Import Certificates through the CBP-ACE system has the potential to finally provide comprehensive data transparency on the full spectrum of imported organic products. The 2018 Farm Bill enables AMS to access information available in CBP-ACE system. We encourage AMS to access, aggregate and publically report data on organic imports. This information is critical to understanding global organic trade and setting baselines for accurate accounting of volumes and origins of imported organic products.

- **OTA supports the allowance of equivalent data systems to be used as a substitute for NOP Import Certificates provided that the same data is able to be collected and is able to (and required to) be uploaded to the CBP-ACE system.** To avoid inconsistency in which systems are deemed equivalent, USDA should be the sole deciding party about which systems are equivalent. This decision should not be left to individual certifiers. In determining equivalent data systems, USDA must ensure that equivalent data sources are able to be aggregated with NOP Import Certificate data to support our recommendation (see above) that AMS aggregates and reports data on organic imports. Comprehensive datasets aren't possible if equivalent data systems are excluded from the data aggregation and reporting.

→ **Recommendation:** Revise §205.273 to identify USDA as decision maker regarding data sources that are equivalent.

As a point of clarification, OTA also recommends non-substantive revisions to consolidate the examples of equivalent data sources to make it easier and clearer to understand the regulatory provision for determining what an equivalent data source is.

→ **Recommendation:** Implement revisions to consolidate the examples of equivalent data sources to make it easier and clearer to understand what an equivalent data source is. *See OTA's requested revisions in Table 2 below.*

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<sup>5</sup> [https://ota.com/sites/default/files/indexed\\_files/OTATradeReport\\_10-30-2017.pdf](https://ota.com/sites/default/files/indexed_files/OTATradeReport_10-30-2017.pdf)

- **OTA recommends that NOP clarify which party is responsible for uploading the NOP Import Certificate data (or equivalent) into the CBP ACE System.** The proposed rule text does not specify which party is responsible for uploading data to CBP-ACE. The preamble states (emphasis added) that *“the organic exporter must provide the data associated with the NOP Import Certificate to CBP by uploading the data into the ACE system as an electronic record.”* The NOP Fact Sheet<sup>6</sup> on Import Certificates says that U.S. Importers and Customs Brokers will file entries in ACE using Organic Import Certificate. The NOP Insider<sup>7</sup> states that U.S. importers may begin requesting the NOP Import Certificate from exporters to include in their import filings at any time.

➔ **Recommendation:** Provide clarification of which party is responsible for uploading the NOP Import Certificate data (or equivalent) into the CBP-ACE System.

- **OTA recommends revisions to the proposed definition of *organic exporter* to ensure clarity and alignment of the exporter’s activities under the definition of *Handle* as proposed in Section #1 of the Proposed Rule.** According to the Preamble, the exporter and importer are both intended to be certified under this proposed rule for exemptions from certification. (Preamble: Preamble: *An organic exporter must be certified organic by certifying agents accredited by the USDA or certifying agents authorized by a trade arrangement, and must maintain records required under § 205.103. Organic exporters may be the final physical handler of organic products within a foreign country or they may be the entities that facilitate, sell, or arrange the sale of organic products shipped to the United States.*) However, the proposed definition of *Handle* in Section #1 of the proposed rule (Applicability and Exemptions from Certification) does not directly cover all of the activities included in the proposed definition of *organic exporter*. Also, the proposed definition of *organic exporter* as written in the proposed rule includes activities (*“consigns, or arranges for the transport/shipping”*) which are not specifically addressed in the proposed rule’s definition of *Handle*. This discrepancy will create an opportunity for confusion about whether the exporter is required to be certified as a handler.

We recommend that the definition of *organic exporter* be revised so that it clearly and directly ties back to the definition of *Handler*. Certifiers can then use the definition of *Handler* to evaluate whether the exporter’s activities are subject to certification. Exporters or importers that *Handle* and do not fall under an exemption from certification should be required to be certified. We also recognize there may be exporters or importers that are handlers but may qualify under an exemption under the proposed rule. These exemptions may be impacted by future revisions to the proposed rule based on public comment. For example, OTA is recommending a revision to include an exemption for

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<sup>6</sup> <https://www.ams.usda.gov/sites/default/files/media/FactSheetImportCertsLaunch.pdf>

<sup>7</sup> <https://content.govdelivery.com/accounts/USDAAMS/bulletins/29a22e5>

customs brokers and/or freight forwarders that only act as an intermediary between importers and the government or between shippers and transportation services, but do not take physical or financial possession or otherwise handle the agricultural products (*See OTA's Comments on Exemptions from Certification.*)

→ **Recommendation:** Revise definition of *organic exporter* in §205.2 to ensure clarity and alignment of the exporter's activities under the definition of *Handle* in Section #1 of the Proposed Rule: Applicability and Exemptions from Certification. **See OTA's requested revisions in Table 2 below.**

- **OTA does not support the 30-day timeframe for certifiers to review and issue an NOP Import Certificate as written in the proposed rule.** The proposed rule requires that the certifier must review and issue import certificates for compliant shipments within 30 days of receiving the request for the import certificate. According to the proposed rule (emphasis added): “*The certifying agent must review an NOP Import Certificate request, determine whether the shipment complies with the USDA organic regulations, and issue the NOP Import Certificate or equivalent within 30 calendar days of receipt if the shipment complies with the USDA organic regulations.*” The certifier’s responsibility during this time (according to the Preamble, emphasis added) is to verify that: “(1) the information submitted on the NOP Import Certificate, or equivalent, is accurate, including confirmation of the organic status of each product listed on the NOP Import Certificate; and (2) the final handler has the capacity to produce or handle the quantity of organic product to be exported.”

The certifier’s 30-day timeframe is not tethered to physical movement of the product, nor to the deadline for uploading the data to the CBP-ACE system. The intent described in the preamble is that the data from the valid Import Certificate or equivalent is uploaded to the CBP database within 10 calendar days after the shipment physically entering the U.S. As stated in the Preamble (emphasis added), “*the NOP Import Certificate, or equivalent data, must be uploaded into the ACE system within 10 calendar days of the shipment entering the United States. This is consistent with existing trade filing timeframes in ACE using the Entry Summary process.*” In order to upload the data to the CBP-ACE system, the valid certificate needs to have been issued.

The certifier’s 30-day timeframe is also not tethered to the importer’s responsibilities to verify accuracy of the import certificate. The Proposed Rule requires that the importer perform certain activities upon receiving the shipment, and two of these activities are contingent upon having the valid NOP Import Certificate. From the proposed rule (Emphasis added): “*Upon receiving a shipment with organic products, the organic importer of record must ensure the shipment is accompanied by a verified NOP Import Certificate or equivalent; must verify that the shipment contains only the quantity and type of certified organic product specified on the NOP Import Certificate or equivalent; and must verify that the shipment has had no contact with prohibited substances pursuant to 7 CFR 205.272 or exposure to ionizing radiation pursuant*”

to 7 CFR 205.105, since export.” In order to complete these tasks as written in the proposed rule, the valid certificate needs to have been issued.

**Because the 30-day timeframe is not tethered to the deadline for uploading data in to the CBP-ACE system nor the importer’s receiving of a shipment, the 30-day timeline for certifiers could be overridden by these other steps in the procedure and is therefore not useful or appropriate to retain in the regulations.** For example: If an exporter requests a Import Certificate on Day 1, and the shipment arrives at the US Port of Entry on Day 5, then the data would need to be uploaded to CBP by Day 15. This means that the certifiers need to have issued the importer certificate by Day 15 (not Day 30) so that the appropriate data is available for uploading to CBP. Furthermore, if the importer of record is ready to accept the product on the day of arrival (Day 5, from the previous example), then the importer needs to have access to the valid Import Certificate on that day. This means that that the certifier needs to have issued the import certificate by Day 5 (not Day 30) for the importer to carry out its responsibilities per the regulations to verify the physical shipment against the data in the import certificate.

➔ **Recommendation:** Revise §205.273(b) to remove the 30-day timeframe. *See OTA’s requested revisions in Table 2 below.*

- **OTA recommends that certifiers issue valid NOP Import Certificates for compliant shipments as soon as possible, ideally upon arrival of the physical shipment at the U.S. Port of Entry. However, the procedures and deadlines for requesting and issuing NOP Import Certificates need to accommodate various modes of transportation and frequencies of shipments (particularly perishable, high frequency and/or short-notice shipments arriving by ground transportation from Mexico and Canada), balanced with certifier’s operational capacity, without impeding legitimate trade flow or compromising organic integrity and enforcement capabilities.**

The NOP Import Certificate requirements need to be flexible enough to support all forms of international trade. Thousands of shipments of organic products arrive in the U.S. every year, entering numerous Ports of Entry, and arriving via plane, truck, vessel, and railcar. Shipments are entering 365 days per year at all hours of the day and night. Many organic products are perishable products that are distributed and sold to end consumers within days of entry into the U.S.

### ***Benefits of issuing import certificates as soon as possible***

It is beneficial to minimize the window of time between the physical shipment of organic product arriving at the U.S. Port of Entry and the certifier issuing a valid NOP Import Certificate for compliant shipments. Importers can be assured that the certifier has completed its responsibility to review and verify the information on the NOP Import Certificate by the time the importer is ready to accept the product at the U.S. Port of Entry. The Proposed Rule requires that the importer perform certain activities upon receiving the shipment, and two of these activities are contingent upon having the valid NOP Import Certificate. From the proposed rule (Emphasis added): *“Upon receiving a shipment with organic products, the organic importer of record must ensure the shipment is accompanied by a verified NOP Import Certificate or equivalent; must verify that the shipment contains only the quantity and type of certified organic product specified on the NOP Import Certificate or equivalent; and must verify that the shipment has had no contact with prohibited substances pursuant to 7 CFR 205.272 or exposure to ionizing radiation pursuant to 7 CFR 205.105, since export.”* In order to complete these tasks as written in the proposed rule, the valid certificate needs to have been issued.

Timely issuance of NOP Import Certificates can minimize importer’s risk of accepting product without a valid certificate or need to hold product waiting for a valid certificate. NOP is clear in the Preamble that the NOP Import Certificate requirements are not meant to impede trade, and a shipment containing organic products may enter the United States without an NOP Import Certificate at the time of entry. NOP explains in the preamble (emphasis added) *“AMS acknowledges the concern that using NOP Import Certificates may slow the importation of organic product. Therefore, AMS is requiring that organic imports that pass through U.S. Ports of Entry be associated with, but not accompanied by, an NOP Import Certificate. This means that a shipment containing organic products may enter the United States without an NOP Import Certificate at the time of entry.”* However, allowing a time-lag after the shipment arrives until the certifier determines if the certificate is valid may not necessarily lead to unimpeded flow of trade as NOP intends. There is a burden for some importers who may be hesitant to accept and move imported products throughout their supply chains if they have not yet received a valid organic import certificate. Downstream certified organic handlers may be unwilling to buy a product that does not yet have a valid organic import certificate. For some importers, there is an unacceptable level of risk in accepting a not-yet-approved organic shipment and selling it to a buyer, or combining it with other approved organic product. To manage their risk, importers may choose to hold a product at the port while they are waiting for the valid import certificate, which leads to increased storage fees, and loss of valuable shelf-time for perishable products.



***Avoiding impediment of legitimate trade flow or compromising organic integrity and enforcement capabilities***

The NOP Import Certificate requirements should not negatively impact the ability of legitimate organic products from entering the U.S. market. An NOP Import Certificate, in and of itself, should not serve -- and is not intended to serve -- as a singular or exclusive tool for guaranteeing real-time organic compliance of imported products as received at the U.S. Port of Entry. Organic integrity of exports and imports can and should be verified through an operation's recordkeeping, monitoring practices, procedures and other systems for maintaining organic integrity (and the certifier's oversight thereof) as required by the current NOP regulations, and new strengthened regulations proposed in the Strengthening Organic Enforcement Proposed Rule. According to NOP Instruction 4013 Maintaining Integrity of Organic Imports<sup>8</sup>, audit trail documentation that should already be in use by organic operations to ensure compliance includes: Organic certificates for each product with the name of the certified operation and their certifier; Purchase and receiving records with information identifying the specific product(s), lot numbers, quantities, and supply chain entities; Shipping records with information such as lot numbers, product volume, handling instructions and the name of the last certified organic operation; Weigh tickets, receipts, and tags; Clean truck/container affidavits for bulk product verifying that truck/container was thoroughly cleaned and poses no risk of contact with prohibited substances; Phytosanitary certificates from the last country of export; and more. The SOE Proposed Rule adds additional requirements such as having supply chain traceability, fraud prevention plans, and organic identification on nonretail containers. The import or exporter describes its plans for using these tools and practices to verify and ensure compliance of organic exports and imports, and the certifier reviews and verifies the plans through annual inspections, periodic residue testing, and other oversight measures. These tools and practices are not directly tied to issuance of the NOP Import Certificate yet still must be carried out even if the NOP Import Certificate is not available at the time of entry at the U.S. Port of Entry. Provided that these systems for maintaining organic integrity are in place, there will be no need for imported shipments to be required to be held at U.S. Port of Entry waiting on the issuance of an NOP Import Certificate in order to confirm organic compliance.

Verifying compliance based on these tools and systems can be more effective than relying only on an NOP Import Certificate to guarantee real-time organic compliance verification at the U.S. Port of Entry. If used as a singular or exclusive tool to guarantee real-time organic compliance, the NOP Import Certificate could become a fraud opportunity and distract from other organic integrity verification systems. Rather, the NOP Import Certificate is one *of many* elements in a system of maintaining and verifying integrity of organic imports. NOP Import Certificates also provide additional value in terms of strengthening supply chain traceability and import data transparency.

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<sup>8</sup> <https://www.ams.usda.gov/sites/default/files/media/NOP4013IntegrityOrganicImports.pdf>

### *Accommodations for various modes of transportation and frequencies of shipments*

The procedures and timeframes for requesting and issuing import certificates need to accommodate various modes of transportation and frequencies of shipments. NOP currently requires import certificates to accompany imports from some countries of origin under equivalency arrangements, but none of those countries are accessible by ground transportation. For product arriving by ocean freight, it will likely be possible for the certificates to be available at the time the shipment arrives. However, the new dynamic of using imports certificates for shipments arriving by ground transportation from Mexico and Canada is very different in comparison to imports arriving from countries that currently use NOP Import Certificates. Mexico and Canada are contiguous to the U.S., making import possible at much shorter timeframes at much higher frequencies. This means a higher volume of import certificates will need to be issued, with shorter notice of the products being declared on the import certificate. The significance of this new dynamic must be taken in to consideration when developing requirements for NOP Import Certificates. The requirements need to accommodate high frequency, short-notice, and/or perishable shipments of organic products arriving by ground transportation from Mexico and Canada.

Perishable produce imported from Mexico is perhaps the most significant trade dynamic that needs to be considered. Hundreds of shipments per day are imported across the Mexico border on a constant basis, many within just a few hours of the produce being harvested. Perishable produce arrives most commonly by truck. A single truck may contain multiple product types, pack-sizes, varieties, from multiple growers and pack-houses. Several certificate-holders may contribute product to a single truck. A single exporter may arrange multiple trucks in a single day. In their peak season, a single produce exporter can have up to 100 shipments (trucks) per day from Mexico. This exact contents and quantities of products are confirmed once the truck is finished loading, which can be as three hours prior to the truck arriving at a U.S. Port of Entry. Trucks may be arriving at any hour of the day including overnight and weekends, year round.

Shipments by ground transportation from Canada can impose similar time constraints even for nonperishable products. Trucks or railcars of grain can be loaded in as little as 12 hours before arriving at a U.S. Port of Entry. Air-freight transportation can also have significantly shorter windows between loading and arrival in the U.S. compared to longer travel times of imports arriving by ocean-freight.

### ***Operational capacity of certification agencies***

The NOP Import Certificate requirements need take into account the operational capacity (e.g. staffing) of certification agencies responsible for reviewing and issuing NOP Import Certificates for every physical shipment of imported organic product. The new requirements for certifiers to issue import certificates for every physical shipment will impose significant new demands on certifiers, especially considering the high-volume and short-notice demands for import certificates for shipments arriving by ground transportation from Mexico and Canada. As already described above, shipments can be loaded on the same day or overnight or with as little as three hours prior to arrival at the U.S. Port of Entry. Final shipment data (e.g. exact weights, volumes, and container identification numbers) may not be known until the truck or railcar is loaded and ready for shipment, leaving a very small window for certificate request, review, and approval. This dynamic creates significant stress and time pressures for certifiers and certified operations to prepare data and issue certificates in a timely manner.

At this time, there is no evidence that a requirement for certificates to be available at time of arrival in the U.S. could be realistic to implement. Certifiers would need to be staffed twenty-four hours per day, including weekends and holidays, year round, to keep up with the constant influx of organic imports. Lessons learned from the 2016 attempt to require NOP Import Certificates to accompany shipments from Mexico revealed extreme logistical and operational capacity challenges for certification agencies to overcome in order to be staffed appropriately for this type of work. Considering that NOP Import Certificates are one *of many* elements in a system of maintaining and verifying integrity of organic imports, such significant investments in 24/7 staffing for this sole purpose may not be warranted.

- **NOP should issue guidance to explain the procedures and ideal deadlines for requesting and issuing NOP Import Certificates.**

Given the magnitude and dynamics of organic imports to the U.S., OTA does not recommend that the regulations specify a one-size-fits-all requirement for exactly when the certifier must issue a NOP Import Certificate for valid shipments. Rather, we recommend that NOP provide details and instructions through guidance. Guidance is an appropriate mechanism for explaining the procedures for requesting and issuing NOP Import Certificates, and establishing the ideal deadline as being available by the time the physical shipment arrives in the U.S. Additionally, the guidance can explain the circumstances under which a NOP Import Certificate can be issued after the shipment arrives provided that strong organic integrity verification systems are in place. This will allow flexibility where needed, such as high frequency, short-notice, and/or perishable shipments of organic products. Guidance should also provide a clear definition on how to identify and define a single “physical shipment” for various modes of transportation.

The foundation of the NOP Import Certificate procedure should be grounded in the Organic System Plan, developed by the operation and approved by the certifier. Each exporter and importer's Organic System Plan should describe its plan for requesting and/or tracking and receiving NOP Import Certificates. Through the Organic System Plan development and approval process, operators and certifiers can agree to a system and timeline that can accommodate all parties. This process allows for timelines to be established that account for each unique import scenario and various combinations of product type, origin, destination, perishability, mode of transportation, time of year (peak, off peak), etc. The agreed-upon timeline should balance the capacity of the exporter and certifier, while meeting the needs of the importer for receiving the shipment and having access to the NOP Import Certificates.

We encourage exporters, importers, and their certifiers to work together to implement procedures for requesting and issuing NOP Import Certificates as soon as possible, ideally upon arrival of the physical shipment at the U.S. Port of Entry. There are systems and procedures that could begin to be established now that could help work towards the ideal deadline. Operators need to develop efficient systems to ensure that they are collecting and submitting complete information to the certifier so that certificates can be issued quickly and no information is missing or inadequate. Certifiers can work on developing internal systems and procedures that increase efficiencies of receiving, reviewing, and issuing certificates. For example, certifiers should explore the role of pre-shipment notifications that would require exporters to provide information about shipments in advance and let the certifier complete parts of the verification as appropriate. Recognizing that some data points of the import certificate cannot be confirmed until the shipment is loaded (e.g. exact weight or volume), pre-shipment notification still could help minimize the amount of verification that is needed in the short timeframe between loading the shipment and arrival at the U.S. Port of Entry. Certifiers could also explore the role of multi-shipment certificates, such as those used by the Global Organic Textiles Standard. Also certifiers can explore opportunities where expedited review and issuance procedures can be employed for some import/export arrangements, such as operations that are exporting and importing between their own subsidiaries.

In cases where logistical or operational capacity prevents the issuance of valid certificates upon time of entry of product in the U.S. (e.g. such as high frequency, short-notice, and/or perishable shipments of organic products), the certifier may approve an alternative system that allows a certain number of extra days after shipment arrival for the certifier to issue the NOP Import Certificate for compliant shipments. Alternative systems should only be approved in cases where the operation is in good standing and has strong organic integrity verification measures in place. The operation and certifier must agree that the data submitted for the NOP Import Certificate is audited within the agreed-upon timeframe. The certifier should issue valid NOP Import Certificates for compliant shipments no later than 10 calendar days after shipment arrival. As stated in the Preamble (emphasis added), *"the NOP Import Certificate, or equivalent data, must be uploaded into the ACE system within 10 calendar days of the shipment entering the United States. This is consistent with existing trade filing timeframes in ACE using the Entry Summary process."* In order to upload the data to the CBP-ACE system, the valid certificate needs to have been issued. The 10-day maximum will ensure that the valid certificate is – at the very least – issued in time for its data to be uploaded in to the CBP-ACE system.

In all cases, the systems must comply with other regulatory requirements that are not directly tied to issuance of the NOP Import Certificate, such as the product being declared as “organic” to U.S Customs and Border Protection upon entry into the U.S and the importer being responsible for verifying compliance of the received shipment. As much information as is readily available should be uploaded to the CBP-ACE system. Additionally, the certifier may impose stronger controls or more frequent risk-based traceability and mass balance audits of NOP Import Certificates to ensure that the system that was approved in Organic System Plan is effective or needs improvement. NOP Import Certificates should also become a standard element of onsite inspector verification like verification of other organic recordkeeping requirements.

→ **Recommendation:** Develop guidance to explain the procedures and ideal deadlines for requesting and issuing NOP Import Certificates.

- **We recommend that these provisions of the proposed rule (with OTA requested revisions and recommendations for guidance) described above are implemented using a phased approach that accommodates the increased resources needed for certain types of imports.** We recommend **two years** from publication of final rule for shipments by ground transportation from Mexico and Canada; **one year** from publication for all other imports. Shipments by ground transportation from Mexico and Canada will require additional time to come into compliance due to the shorter timeframes and higher frequencies of shipments from these countries via these modes of transportation. Certifiers, importers, and exports all need time to develop and implement systems for managing import certificate requests, reviews, and approvals at significantly higher frequencies than are currently experienced. The extended implementation period for ground shipments from Mexico and Canada will allow certifiers to start collecting data about the volumes, timing and frequencies of these import events and gauge the resources needed to accommodate import certificate requests and issuance procedures. The additional time can also be used for certifiers to identify and resolve any technological issues with issuing electronic import certificates so that the procedures can be executed seamlessly by the time the requirement becomes mandatory.

**We also recommend that NOP completes a successful pilot test of the new electronic organic import certificate before the final rule is fully implemented.** NOP has developed and launched the new electronic system and plans to begin a pilot program in fall 2020. As with any new technology, testing will be critical for success of the system, and the system must be successful for global organic trade to rely on it for every individual shipment of imported organic product. We strongly encourage NOP to work with industry members to pilot the new system and resolve any technological barriers prior to implementation of this rule provision.

**Table 2: OTA’s Requested Revisions to the Proposed Rule and Recommendations for Guidance**

Action & Section	Proposed Rule Text	Revisions and/or Guidance needed to implement OTA’s Positions and improve the quality, clarity or utility of the proposed rule
205.2 Add new term	<i>Organic exporter.</i> The owner or final exporter of the organic product who facilitates the trade of, consigns, or arranges for the transport/shipping of the organic product from a foreign country.	<b>Revision needed</b> to ensure clarity and alignment of the exporter’s activities under the definition of <i>Handle</i> in Section #1 of the Proposed Rule: Applicability and Exemptions from Certification. <i>(See also OTA’s Comments on Exempt Operations)</i>
<b>OTA Requested Revision:</b> <i>Organic exporter.</i> The <del>handler owner or final exporter of the organic product</del> who facilitates the trade of, consigns, or arranges for the transport/shipping of the organic product from a foreign country.		
205.2 Add new term	<i>Organic importer of record.</i> The operation responsible for accepting imported organic products within the United States.	<b>Revision needed</b> to clarify that the importer is responsible for accepting organic products “at a U.S. port of entry” to avoid confusion with other recipients elsewhere in the supply chain. <ul style="list-style-type: none"> <li>• Add “at a U.S. Port of Entry”</li> </ul>
<b>OTA Requested Revision:</b> The operation responsible for accepting imported organic products within the United States <u>at a U.S. Port of Entry.</u>		
205.273 Add new section	Imports to the United States.	

205.273 Add	Each shipment of organic products imported into the United States through U.S. Ports of Entry must be certified pursuant to subpart E of this part, labeled pursuant to subpart D of this part, be declared as organic to U.S. Customs and Border Protection, and be associated with a valid NOP Import Certificate (Form NOP 2110-1) or equivalent data source.	
205.273(a) Add	Persons exporting organic products to the United States must request an NOP Import Certificate, or provide data through an equivalent data source, from a certifying agent, for each physical shipment of certified organic products prior to their export. Only certifying agents accredited by the USDA or foreign certifying agents authorized under an organic trade arrangement may issue an NOP Import Certificate or approve a listing in an equivalent data source (e.g., a third-party export system).	<p><b>Revision needed</b> to use consistent terminology throughout the rulemaking action. The SOE Proposed Rule on Foreign Conformity Assessment Systems proposed a new system of “equivalence determinations” which should be used instead of trade arrangement in 205.273(a). (See SOE Section #10: Accepting Foreign Conformity Assessment Systems).</p> <ul style="list-style-type: none"> <li>• Replace “trade arrangement” with “equivalence determination”</li> </ul> <p><b>Revision needed</b> to move the example of equivalent data sources to 205.273(e) to consolidate the regulatory provision for determining what an equivalent data source is. See OTA Position on <b><u>equivalent data sources</u></b>.</p> <ul style="list-style-type: none"> <li>• Remove “e.g. a third party export system”</li> </ul> <p><b>Guidance is needed</b> to explain the procedures and ideal deadlines for requesting and issuing NOP Import Certificates. See OTA’s Recommendation above.</p>
<p><b>OTA Requested Revision:</b>  Persons exporting organic products to the United States must request an NOP Import Certificate, or provide data through an equivalent data source, from a certifying agent, for each physical shipment of certified organic products prior to their export. Only certifying agents accredited by the</p>		

USDA or foreign certifying agents authorized under an organic ~~trade arrangement~~ equivalence determination may issue an NOP Import Certificate or approve a listing in an equivalent data source ~~(e.g., a third-party export system)~~.

205.273(b)  
 Add

The certifying agent must review an NOP Import Certificate request, determine whether the shipment complies with the USDA organic regulations, and issue the NOP Import Certificate or equivalent within 30 calendar days of receipt if the shipment complies with the USDA organic regulations.

**Revision needed** to implement OTA Position on the **30-day timeframe** for certifiers to issue certificates.

- Remove 30-day timeframe.

**Revision needed** to accommodate shipments that are imported under an equivalence determination. This clarification is explained by the preamble (emphasis added): *The organic exporter’s certifying agent would issue the NOP Import Certificate, or equivalent, provided it has verified that the shipment complies with the USDA organic regulations or an equivalent standard.*

- Add “or the terms of an equivalence determination”

**OTA Requested Revision:**

The certifying agent must review an NOP Import Certificate request, determine whether the shipment complies with the USDA organic regulations or the terms of an equivalence determination, and issue the NOP Import Certificate or equivalent ~~within 30 calendar days of receipt~~ if the shipment is compliant ~~complies with the USDA organic regulations~~.

205.273(c)  
 Add

Each compliant organic shipment must be declared as organic to U.S. Customs and Border Protection through a U.S. Port of Entry by uploading the unique NOP Import Certificate, or equivalent electronic data entry, into the U.S. Customs and Border Protection’s Automated Commercial Environment system.

**Clarification is needed** about which party is responsible for uploading the Import Certificate data (or equivalent) into the CBP ACE System.



<p>205.273(d) Add</p>	<p>Upon receiving a shipment with organic products, the organic importer of record must ensure the shipment is accompanied by a verified NOP Import Certificate or equivalent; must verify that the shipment contains only the quantity and type of certified organic product specified on the NOP Import Certificate or equivalent; and must verify that the shipment has had no contact with prohibited substances pursuant to 7 CFR 205.272 or exposure to ionizing radiation pursuant to 7 CFR 205.105, since export.</p>	<p><b>Revision needed</b> to correct the proposed rule text to align with the text in 205.273 above which states (emphasis added): <i>Each shipment of organic products imported into the United States through U.S. Ports of Entry must be certified pursuant to subpart E of this part, labeled pursuant to subpart D of this part, be declared as organic to U.S. Customs and Border Protection, and be <u>associated with</u> a valid NOP Import Certificate (Form NOP 2110-1) or equivalent data source.</i> This correction is also needed to align with the preamble (emphasis added): <i>“AMS acknowledges the concern that using NOP Import Certificates may slow the importation of organic product. Therefore, AMS is requiring that organic imports that pass through U.S. Ports of Entry be <u>associated with</u>, but not accompanied by, an NOP Import Certificate.”</i></p> <ul style="list-style-type: none"> <li>• Replace “accompanied by” with “associated with”</li> </ul> <p><b>Revise needed</b> to clarify the reference to a “valid” import certificate that has been issued by a certifier in accordance with 205.273(b), which states (emphasis added), <i>“associated with a <u>valid</u> NOP Import Certificate.”</i></p> <ul style="list-style-type: none"> <li>• Replace “valid” with “verified” in the phrase “verified NOP Import Certificate or equivalent”</li> </ul>
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**OTA Requested Revision:** Upon receiving a shipment with organic products, the organic importer of record must ensure the shipment is ~~accompanied by~~ associated with a ~~verified~~ valid NOP Import Certificate or equivalent; must verify that the shipment contains only the quantity and type of certified organic product specified on the NOP Import Certificate or equivalent; and must verify that the shipment has had no contact with prohibited substances pursuant to 7 CFR 205.272 or exposure to ionizing radiation pursuant to 7 CFR 205.105, since export.

<p>205.273(e) Add</p>	<p>The use of the term equivalent in this section refers to electronic data, documents, identification numbers, databases, or other systems verified as an equivalent data source to the NOP Import Certificate.</p>	<p><b>Revision needed</b> to clarify that USDA-AMS is the sole decider of which third-party databases/systems are equivalent. See OTA’s Position on <b><u>equivalent data systems</u></b>.</p> <ul style="list-style-type: none"> <li>• Add “by the Administrator”</li> </ul> <p><b>Revision needed</b> to integrate relevant examples from 205.273(a) and from the preamble. See OTA’s Position on <b><u>equivalent data systems</u></b>. Relevant portion of the Preamble: <i>The use of the term “equivalent” in this section refers to data and systems that are created, issued, or used by the United States or foreign governments to share trade-related information.</i></p> <ul style="list-style-type: none"> <li>• Add examples: data sources and systems that are created, issued, or used by the United States or foreign governments to share trade-related information, third-party export systems</li> </ul>
<p><b>OTA Requested Revision:</b> The use of the term equivalent in this section refers to <u>data sources and systems that are created, issued, or used by the United States or foreign governments to share trade-related information, including but not limited to</u> electronic data, documents, identification numbers, databases, or other systems <u>(e.g., a third-party export system)</u> verified <u>by the Administrator</u> as an equivalent data source to the NOP Import Certificate.</p>		
<p>205.300(c) Revise</p>	<p>Products produced in a foreign country and exported for sale in the United States must be certified pursuant to subpart E of this part, and labeled pursuant to this subpart D, and must comply with the requirements in 205.273, Imports to the United States.</p>	<p><b>Revision needed</b> to accommodate shipments that are imported under an equivalence determination.</p> <ul style="list-style-type: none"> <li>• Add “and the terms of an equivalence determination”</li> </ul>
<p><b>OTA Requested Revision:</b> Products produced in a foreign country and exported for sale in the United States must be certified pursuant to subpart E of this part, and labeled pursuant to this subpart D, and must comply with the requirements in 205.273, Imports to the United States, <u>and the terms of an equivalence determination</u>.</p>		



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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Vice President, Regulatory and Technical Affairs

cc: Laura Batcha  
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