

Date: October 5, 2020

Docket: AMS-NOP-17-0065

Re: Strengthening Organic Enforcement Proposed Rule – Organic Certificates and Paperwork Submissions (Data Reporting)

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 #5 (Certificates of Organic Operations) and Section #7 (Paperwork Submissions to the Administrator).

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

Certificates of Organic Operation

- OTA does not support formalizing ‘INTEGRITY’ as the name of the NOP Organic Integrity Database. We support the proposed definition, but request that the associated term retain the full clause of “Organic INTEGRITY Database” along with its acronym “OID.”
- OTA recommends adding the term ‘*organic integrity*,’ as it is typically used, to the organic regulations to clearly define a core concept that is integral to the purpose of this proposed rule and used throughout this proposed rule.
- OTA supports the use of uniform organic certificates generated through OID, but we have concerns about the time and resources it will realistically take to achieve this goal as a requirement.
- OTA does not support a certificate expiration date. An expiration date is more problematic than it is useful. The goal of ensuring a consistent way of communicating and interpreting the validity and status of an organic certificate can be accomplished other ways.
- OTA recommends a *two-year* implementation period after the publication of the final rule for the proposals in this section.

Paperwork Submissions to the Administrator

- OTA agrees that accurate and current data must be reported and maintained in the NOP Organic INTEGRITY Database (OID).
- OTA supports global use of the Organic INTEGRITY Database (OID).
- OTA recommends that grower group operations be identified as such in the OID and identify how many members are in the group.
- OTA recommends that NOP issue a final rule that explicitly requires data reporting by crop type, acreage and location (e.g. state), and number of animals by livestock type and location (e.g. state), on a monthly basis to the OID.

- OTA supports timely updates to maintain accurate data reflecting an operation's current status.
- OTA recommends that NOP contract with NASS, a federal statistical agency, to analyze and turn mandatory data into a comprehensive, reliable, statistical report. This would be *in addition* to the data NOP makes available through the Organic INTEGRITY database.
- OTA supports the proposal that all requirements in this section be implemented within one year after the publication of the final rule.

NOP Questions:

1. *How frequently should accredited certifying agents update the information in an operation's organic certificate?*

Updates should be made in real time as changes occur. If no changes occur during the year, the certificate should be updated annually to reflect new dates.

2. *Should an expiration date be included on all certificates of organic operation? Would this make them more useful?*

No. OTA does not support a certificate expiration date. Establishing an expiration date for a physical or electronic document does not serve a beneficial purpose and would create more problems than solutions. See our detailed comments below.

Background

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. In the 2018 Farm Bill, OTA 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.

OTA's Positions and Recommendations

ORGANIC CERTIFICATES

- **OTA does not support formalizing the term INTEGRITY as the name of the NOP Organic Integrity Database.** We support the proposed definition, but request that the associated term (the name of the database) retain the full clause - “Organic INTEGRITY Database.” The word “integrity” is a fundamental term used by the organic sector to describe the “integrity” of an organic product as well as the “integrity” of the organic supply chain. More specifically, the term is used to describe the uncompromised quality of being authentically certified organic. We request that the term ‘organic integrity’ continue to be reserved as a descriptor for organic authenticity rather than become the name of a database.

In the preamble, NOP explains the terminology and objectives of this proposed rule. In addressing terminology, NOP explains that four concepts are used throughout this proposed rule and they are integral to the purpose of this proposed rule. Those concepts are: 1) organic integrity; 2) organic fraud; 3) audit trails; and 4) supply chain traceability. NOP explains each concept upfront to assist reader understanding. Given the importance of the term ‘organic integrity,’ and to improve the clarity of this proposed rule, OTA highly recommends that it be formalized in the organic regulations as a new term and definition and not be conflated with or used as the name of the NOP database.

- ➔ **Recommendation:** Add the new term “Organic INTEGRITY Database” and formalize its acronym as OID:
 - **Organic INTEGRITY Database (OID):** The National Organic Program’s electronic, web- based reporting tool for the submission of data, completion of certificates of organic operation, and other information, or its successors.
- ➔ **Recommendation:** Add a new term and definition to the regulations, “*organic integrity.*” OTA recommends the definition that is used in the preamble:
 - **Organic Integrity:** The unique attributes that make a product organic, and define its status as organic. A product that fully complies with the USDA organic regulations has integrity, and its organic qualities have not been compromised. *See OTA’s requested revision in Table 5*

§ 205.404(b): OTA supports the use of organic certificates generated through the NOP Organic INTEGRITY Database (OID). We believe that a federated organic certificate can bring many benefits to the organic sector, and we are largely in favor of this direction. However, we have concerns about how the requirement may impact certifiers and the technology systems and databases they have built and invested in over the course of many years and the time and resources it will take to make the transition. We understand that NOP is not

seeking to eliminate “these unique sources of value,” but nonetheless it will require additional time and resources for certifiers to maintain data in two systems. We also have concerns about the potential certification service delays that may arise should the OID be temporarily out of service or functioning less than optimally. OTA believes that the goal of certificate uniformity is extremely important, and we strongly support the OID as **the “go-to” place** to access data and to verify organic certificates and certification status in real-time. We fully support this direction, but also recognize the time and resources that are needed to get there. We are also aware of the heavy reliance this proposed rule places on OID, and again, emphasize the importance of adequate NOP funding to support its functionality into the foreseeable future.

OTA strongly supports mandatory reporting to the NOP Organic INTEGRITY Database and access to real-time (or “modern-time”) electronic information that will support the use of uniform certificates, whether they be electronic or paper-based. We would like to see less reliance on the paper-form of the certificate, and more reliance on using a functional and up-to-date database to verify an organic operation’s status and to access critical data such as crop acreage.

➔ **Recommendation:** NOP’s goal is to eliminate the wide variability in the content and style of certifying-agent-generated organic certificates. OTA agrees with this goal and we agree that this variation may increase the chance of alteration and organic fraud. OTA supports moving to the mandatory use of the NOP Organic INTEGRITY Database to generate organic certificates, but we want to ensure that organic certifying agents have the time and resources needed to make the transition. To accommodate a realistic transition and to ensure an efficient and seamless interface, OTA is recommending a two-year implementation time period. We also support exploring an option where certifying agents could retain the ability to issue a certificate as needed, provided it matches the OID certificate and is clearly linked to the OID.

- **OTA does not support a certificate expiration date.** This requirement was a topic of great debate for many years under the corresponding 2006 NOSB recommendation, and certified operators and certifying agents widely disliked and disagreed with the recommendation. Certifying agents have established effective ways to indicate whether an organic certificate is current and valid. Establishing an expiration date for a piece of paper does not serve a beneficial purpose and it would actually create more problems and confusion since it would not have any effect on the operation’s certification status. OTA believes the primary issue that needs to be addressed is the variability and lack of consistency around the terms and dates used to communicate the validity of a certificate. While certifying agents have established ways to indicate whether a certificate is current and valid, the lack of uniformity can be challenging to certified operations trying to assess multiple certificates from multiple certifying agents.

➔ **Recommendation:** The goal should be a simple and uniform way for a certifying agent or a certified operation to assess whether a certificate is current. For example, specify the use, meaning and placement (certificate vs. addendum) of 1) NOP effective date; 2) certificate issue date; 3) anniversary date; 4) certificate revision or

signature date; and 5) the ten-digit NOP Operation ID. This is done to some extent in **NOP 2603**. However, further refinement and clarification are needed to achieve consistent interpretation and use by certifying agents.

See OTA's recommended guidance in Table 5

- **OTA supports timely updates to maintain data reflecting an operation's current status.** Accordingly, we support the requirement for certifying agents to update OID within 3 business days of accepting an operation's surrender, or suspending or revoking an operation's certification (see *OTA's comments Noncompliance, Mediation and Appeals*)

PAPERWORK SUBMISSIONS TO THE ADMINISTRATOR (DATA REPORTING)

- **OTA agrees that accurate and current data must be maintained in the Organic INTEGRITY Database.** The organic industry cannot continue to thrive and maintain stable markets without good data collection. A requirement for certifying agents to report production area certified by crop/livestock and location, on an at least an annual basis, to the Organic INTEGRITY Database is one of the most impactful single actions that can be taken to increase the integrity in the global organic control systems. Currently there are no means to accurately calculate organic acreage and/or yield estimates on a country-by-country basis. This hinders the ability of NOP, the State Organic Program, and certifiers to evaluate the total volume of organic product coming from any given region and accordingly detect whether fraud is occurring.
- **OTA supports global use of the Organic INTEGRITY Database.** If global use is not possible, then we recommend investing in developing some additional system that give organic operations and certifying agents access to the same type of information about certified operations around the world that are operating under equivalency arrangements or recognition agreements and selling product into the United States. The system should include operations in equivalent countries eligible to export to the U.S. as organic and operations certified to the USDA regulations by a certifier operating under a recognition agreement. (*See also OTA's comments on Accepting Foreign Conformity Assessment*)
- **OTA recommends that grower group operations be identified as such in the NOP Organic INTEGRITY Database.** Currently, the status of an operation as being a grower group is not visible in the Organic INTEGRITY Database, so it is not possible to determine if an operation is a grower group or how many grower groups are certified to the NOP organic standards. This is an important point of data transparency. Ideally, the OID should identify if an operation is certified as a group operation and identify how many members are in the group. The total certified acreage group operation should already be captured in requirements for operations to report certified acreage to the Administrator, because group operations need to report data just as any other certified operation. (*See also OTA's comments on Grower Group Operations*)

- **OTA does not support the proposed text under § 205.501(a)(15) because it does not clearly or adequately convey what the mandatory data requirements will include.** To accurately calculate organic acreage and/or yield estimates on a country-by-country basis, it is critical that certifying agents be required to submit data by crop type, acreage and location (e.g. state), and number of animals by livestock type and location (e.g. state), at least on a quarterly or biannual basis. OTA is sensitive to confidential business information and therefore expects that NOP will continue its practice of aggregate reporting to the public.
 - ➔ **Recommendation:** OTA recommends that NOP issue a final rule that explicitly requires data reporting to NOP by crop type, acreage and location (e.g. state), and number of animals by livestock type and location (e.g. state), at least on an annual basis to the Organic Integrity Database. Reports to the public will include aggregated acreage and livestock data only. *See OTA's requested revision in Table 5*
- **OTA recommends that NOP contract with the National Agricultural Statistics Service (NASS) to analyze and turn mandatory data into a comprehensive, reliable, statistical report.** Mandatory data reporting is not only essential to identifying fraud, it is also critical for policymakers, farmers, businesses, and crop insurance providers to make sound policy, business, marketing, and risk management decisions as well as identify what sectors are strong, and where there is room for growth. Since 2008, NASS's Organic Survey has become a valuable and essential source of data on health and emerging trends facing organic agriculture. The SOE requirement for certifying agents to maintain updated data in the NOP Organic INTEGRITY Database provides an excellent opportunity for partnership between NOP and NASS, whereas NOP can gather data through mandatory reporting and make that data available through the OID. Additionally (but not in place of), NASS, a federal statistical agency, could turn the reported data into a comprehensive, reliable, statistical report. The data will still have gaps due to confidential screens. However, it will come much closer to a population number than the national producer surveys currently do. Contracting with NASS to produce such a report would be incredibly valuable to the organic sector.
 - ➔ **Recommendation:** In addition to the data NOP makes available through the Organic INTEGRITY Database, OTA recommends that NOP contract with NASS, a federal statistical agency, to analyze and turn mandatory data into a comprehensive, reliable, statistical report.
- **OTA supports timely updates to maintain data reflecting an operation's current status.** The frequency of reporting should be directly related to operational changes, which will be highly variable per operation. Certifying agents should be encouraged to report updates whenever there are changes to the products or activities listed on the organic certificate. OTA recommends requiring data to be reported by certifiers to the OID on a monthly basis.

Table 5: OTA’s Requested Revisions to the Proposed Rule and Recommendations for Guidance

Certificates of Organic Operation

Action & Section	Proposed Rule Text	Revisions and/or Guidance needed to implement OTA positions and improve the quality, clarity and utility of the proposed rule.
Add new term	<i>INTEGRITY</i> . The National Organic Program’s electronic, web- based reporting tool for the submission of data, completion of certificates of organic operation, and other information, or its successors.	Revision needed: OTA does not support the proposed term and definition together. The term “integrity” is a very important term that is used commonly to describe the uncompromised quality of being authentically certified organic. We would like to reserve the use of the term to describe organic authenticity, rather than the name of a database. OTA does not have any concerns with the proposed definition for the NOP database, but we would like it to be explicitly tethered to the full phrase of ‘Organic INTEGRITY Database’ and ‘OID ‘for short.
<p>OTA Requested Revision: <u>Organic INTEGRITY Database (OID)</u>. The National Organic Program’s electronic, web- based reporting tool for the submission of data, completion of certificates of organic operation, and other information, or its successors.</p> <p>Also add new term to § 205.2: <u>Organic Integrity</u>. The unique attributes that make a product organic, and define its status as organic. <u>A product that fully complies with the USDA organic regulations has integrity, and its organic qualities have not been compromised.</u></p>		
Redesignate 205.404(c) as 205.404(d); Add new 205.404(c)	In addition to the certificate of organic operation provided for in §205.404(b), a certifying agent may issue its own addenda to the certificate of organic operation. If issued, any addenda must include: (1) Name, address, and contact information for the certified operation; (2) The certified operation’s unique ID number/code that corresponds to the certified operation’s ID number/code in USDA Organic INTEGRITY; (3) A link to USDA Organic INTEGRITY or a link to the certified operation’s profile in USDA Organic INTEGRITY, along with a statement,	Revision needed: OTA supports the use of a certificate addenda. However, we do not support a requirement for the addenda to include an expiration date. <ul style="list-style-type: none"> • Certifying agents have established effective ways to indicate whether an organic certificate is current and valid. • Establishing an expiration date for a piece of paper does not serve a purpose and actually creates confusion since it would not have any effect on the operation’s certification status. • OTA believes the primary issue is and concern that needs to be addressed is the variability and lack of consistency around terms and dates used to communicate the validity of a certificate. While certifying agents have established ways to indicate whether a certificate is current and valid, the lack of

	<p>“You may verify the certification of this operation at USDA Organic INTEGRITY,” or a similar statement;</p> <p>(4) Name, address, and contact information of the certifying agent;</p> <p>(5) “Addendum issue date;” and</p> <p>(6) “Addendum expiration date,” which must not exceed the expiration date of the certificate of organic operation.</p>	<p>uniformity can be challenging to certified operations trying to assess multiple certificates from multiple certifying agents.</p> <ul style="list-style-type: none"> • The goal should be a simple and uniform way for a certifying agent or a certified operation to assess whether a certificate is current. This does not however require a certificate expiration date. <p>Recommended Guidance: To ensure organic certificates are monitored and remain current, OTA recommends that NOP include a method, in Guidance, for certifiers to follow. For example, specify the use and meaning of 1) NOP effective date; 2) certificate issue date; 3) anniversary date; and 4) certificate revision or signature date. This could be accomplished by updating NOP Guidance 2603 with a certificate/addendum template to provide further specificity on where the elements of the certificate should be located. This would help ensure further consistency.</p>
<p>OTA Requested Revision: In addition to the certificate of organic operation provided for in §205.404(b), a certifying agent may issue its own addenda to the certificate of organic operation. If issued, any addenda must include:</p> <p>(1) Name, address, and contact information for the certified operation;</p> <p>(2) The certified operation’s unique ID number/code that corresponds to the certified operation’s ID number/code in USDA Organic INTEGRITY Database;</p> <p>(3) A link to USDA Organic INTEGRITY Database or a link to the certified operation’s profile in USDA Organic INTEGRITY Database, along with a statement, “You may verify the certification of this operation at USDA Organic INTEGRITY Database,” or a similar statement;</p> <p>(4) Name, address, and contact information of the certifying agent;</p> <p>(5) “Addendum issue date;” and</p> <p>(6) “Addendum expiration date,” which must not exceed the expiration date of the certificate of organic operation.</p>		
<p>Redesignated 205.404(d)</p>	<p>Once certified, a production or handling operation’s organic certification continues in effect until surrendered by the organic operation or suspended or revoked by the certifying agent, the State organic program’s governing State official, or the Administrator.</p>	<p>No concerns</p>

Paperwork Submissions to the Administrator

Action & Section	SOE Proposed Rule Text	Revisions and/or Guidance needed to implement OTA's positions and improve the quality, clarity and utility of the proposed rule.
Remove 205.405(c)(3)	Provide notice of approval or denial to the Administrator, pursuant to §205.501(a)(14).	No Concerns.
Revise 205.501(a)(15)	<p>Maintain current and accurate data in INTEGRITY for each operation which it certifies:</p> <p>Submit to the Administrator a copy of: (i) Any notice of denial of certification issued pursuant to §205.405, notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation sent pursuant to §205.662 simultaneously with its issuance; and (ii) A list, on January 2 of each year, including the name, address, and telephone number of each operation granted certification during the preceding year;</p>	<p>OTA agrees that accurate and current data must be maintained in the Organic Integrity Database. Currently there are no means to accurately calculate organic acreage and/or yield estimates on a country-by-country basis. This hinders the ability of NOP, the State Organic Program, and certifiers to evaluate the total volume of organic product coming from any given region and accordingly detect whether fraud is occurring.</p> <p>Revision needed: OTA strongly urges NOP to issue a final rule that clearly requires data reporting by crop type, acreage and location, and number of animals by livestock type and location, on a monthly basis to the Organic Integrity Database. OTA prefers quarterly or biannual reporting including verification of no change.</p> <p>Recommendation: In addition to the data NOP makes available through the Organic INTEGRITY database, OTA recommends that NOP contract with NASS, a federal statistical agency, to analyze and turn mandatory data into a comprehensive, reliable, statistical report.</p>
<p>OTA Suggested Revision: Maintain current and accurate data in <u>organic INTEGRITY Database</u> for each operation which it certifies. Data must be reported <u>by crop type, acreage and location, and/or by number of animals, livestock type and location as determined by AMS.</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,

Gwendolyn Wyard
Vice President, Regulatory and Technical Affairs

Johanna Miranda
Farm Policy Director

cc: Laura Batcha
Executive Director/CEO
Organic Trade Association