

Date: October 5, 2020

Docket: AMS-NOP-17-0065

Re: Strengthening Organic Enforcement Proposed Rule – Personnel Training and Qualifications

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 Sections #8: Personnel Training and Qualifications.

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

- OTA supports strengthening certification personnel and inspector training and qualifications requirements.
- OTA recommends an expanded list of required knowledge and skills for inspectors that includes specific references to mass balance and traceability auditing skills.
- OTA supports the required one year minimum experience requirement, and recommends a revision to clarify how to define and measure the proposal for “one year of field-based experience.”
- OTA supports the requirement for qualifications and training to be specific to the scope and scale of operations assigned for certification review or inspection. We recommend that guidance be developed to define and clarify various “scopes” and “scales” for consistently evaluating whether personnel have the appropriate training and qualifications.
- OTA supports the proposed minimum 20-hour training requirement for inspectors and certification personnel.
- OTA supports the minimum requirements for on-site evaluations of inspectors once per three years. We recommend that guidance be developed to help certifiers align on scenarios when more frequent evaluations are warranted.
- OTA supports the implementation of the proposals in this section (with OTA requested revisions and recommended guidance) within one year after publication of the final rule.

NOP Questions

- 1. *Is 20 training hours a year an appropriate amount of continuing education for organic inspectors and certification review personnel?***
Yes. OTA supports the proposed minimum 20-hour training requirement for inspectors and certification personnel. OTA understands the 20-hours of training could include anything relevant to any skills, knowledge, or experience related to inspections (for inspectors) or certification review (for certification review personnel). See below for more details on OTA's Position and Recommendations.
- 2. *Should organic inspectors be evaluated on-site more frequently than once every three years?***
Yes, if warranted. OTA supports requirements for onsite evaluations of inspectors and does not take objection to the once-per-3-years minimum requirement in the proposed rule. Once per 3 years is common practice by certifiers. More frequent evaluations would be ideal, but we acknowledge that the proposed rule provides for greater frequencies "if warranted." Guidance could be provided to certifiers to align on scenarios when more frequent evaluations are warranted. See below for more details on OTA's Position and Recommendations.
- 3. *Should any other types of knowledge, skills, and experience be specified?***
Yes. OTA recommends adding specific references to mass balance and traceability as required auditing skills for inspectors. See below for more details on OTA's Position and Recommendations.

OTA's Positions and Recommendations

- OTA supports strengthening certification personnel and inspector training and qualifications requirements.** Improvements in qualifications and training of inspectors are key steps in improving a certifier's ability to monitor, detect and address fraud. OTA supports NOP's effort to establish minimum requirements for qualifications and initial and continuing training for certification reviewers and inspectors. It is also NOP's responsibility through its accreditation oversight to ensure that certifiers have systems in place to properly evaluate the qualifications of inspectors, and ensure that operations are being evaluated and inspected by personnel that are appropriately qualified and trained for that particular type of operation. To ensure strong and consistent implementation of these new requirements, OTA encourages that during accreditation audits, certifiers must demonstrate to NOP their procedure for how they are ensuring a sufficient number of qualified and trained personnel, that the training sources for the 20-hours of continuing education are appropriate and relevant, and that the persons conducting onsite inspector evaluations meet minimum qualification requirements.

- **OTA recommends an expanded list of required knowledge and skills for inspectors that includes specific references to mass balance and traceability auditing skills.** The proposed rule includes a comprehensive list of skills that inspectors must have in order to inspect operations assigned to them, many of them suggested by OTA in our 2018 pre-rule comments such as investigative techniques. The Strengthening Organic Enforcement Proposed Rule includes proposed requirements for inspectors to conduct mass balance audits and traceability audits during onsite inspection (See Proposed Rule Section #4: On-site Inspections). To reinforce the inspector’s capability to perform these audit exercises, OTA recommends that mass balance and traceability auditing skills are specifically listed as required inspector skills. Furthermore, the proposed rule requires that inspectors have import/export knowledge. Not all operations are engaged in import or export of organic products, so this skill is not always required. OTA recommends that the regulation be revised to require this skill only if relevant.
 - ➔ **Recommendation:** Revise §205.501(a)(4)(i)(A) to include to mass balance and traceability as required auditing skills, and to clarify that import/export requirements are only required if relevant. *See OTA’s requested revisions in Table 7 below.*
- **OTA supports the required one year minimum experience requirement, and recommends a revision to clarify how to define and measure the proposal for “one year of field-based experience.”** The proposed rule states that inspectors must have “a minimum of 1 year of field-based experience related to both the scope and scale of operations they will inspect.” We support the requirement for inspectors to have at least one year of experience prior to conducting inspection. However, there is a need for clarification about how to consistently define and measure “1 year” across the many unique circumstances and types of experiences that a prospective inspector might have. For instance, when a prospective inspector is only working part-time, it is unclear how to measure whether the requirement of “1 year” of experience has been met. Although we don’t disagree with this minimum requirement, we acknowledge that there may be varying interpretations among certifiers on this point.

We also see a need for clarification about how to define and measure “field-based experience.” The term “field-based” can be interpreted in several ways. It can mean “in a relevant area of academic study” such as the field of agriculture or science. It can also mean “on-site” such as physically being in place, such as on-site on a farm or facility. NOP uses the term “field-based” in both of these ways throughout the preamble, so clarification is needed about what NOP intends with respect to inspector qualifications. To avoid confusion and to expand the types of experiences that can qualify, OTA recommends replacing “field-based” with “relevant.” We recommend that certifiers do not limit the type of experience only to inspection experience, rather any relevant experience is counted. We recommend that NOP provide guidance for determining best practices to defining and measuring “1 year of relevant experience.”

→ **Recommendation:** Revise 205.501(a)(4)(i)(C) to clarify how to define and measure the regulatory requirement of “1 year of field-based experience.” *See OTA’s requested revisions in Table 7 below.*

If NOP does not accept OTA’s recommended revisions, we ask NOP to please provide an explanation on the NOP’s intent for defining and measuring “one year of field-based experience” to address our concerns described above.

→ **Recommendation:** Provide guidance for determining best practices to defining and measuring “1 year of relevant experience.”

- **OTA supports the requirement for qualifications and training to be specific to the scope and scale of operations assigned for certification review or inspection. We recommend that guidance be developed to define and clarify various “scopes” and “scales” for consistently evaluating whether personnel have the appropriate training and qualifications.** Certifiers will need to have a common understanding of how to define various “scopes” and “scales” so they can consistently determine whether a person has met the qualification and training for an assigned operation. “Scale” commonly refers to scale of production (large, small, group-operations) and can also refer to scale of commercial market (direct, wholesale, export). “Scope” is clearly defined for crops, wild crops, livestock, handling, but are there many sub-scopes within each scope (crops have sub-scopes for mushrooms, field crops, produce, etc.). It will be important for certifiers to have a common methodology for evaluating whether particular combinations of scales and scopes are appropriate to meet qualification requirements for the many unique types and sizes of organic operations.

→ **Recommendation:** Provide guidance to define and clarify various “scopes” and “scales” for consistently evaluating whether personnel have the appropriate training and qualifications.

- **OTA supports the proposed minimum 20-hour training requirement for inspectors and certification personnel.** OTA understands the 20 hours of training could include anything relevant to any skills, knowledge, or experience related to inspections (for inspectors) or certification review (for certification review personnel). We support flexibility for certifiers in determining the types of training that will qualify for meeting this requirement.

- **OTA supports the minimum requirements for on-site evaluations of inspectors once per three years.** Once per 3 years is common practice by certifiers. More frequent evaluations would be ideal, but we acknowledge that the proposed rule provides for greater frequencies “if warranted.” **We recommend that guidance id developed to help certifiers align on scenarios when more frequent evaluations are warranted.**

➔ **Recommendation:** Provide guidance for certifiers to align on scenarios when more frequent onsite inspector evaluations are warranted.

- OTA supports the implementation of the proposals in this section (with OTA requested revisions) within one year after publication of the final rule.

Table 7: 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>Certification review.</i> The act of reviewing and evaluating a certified operation or applicant for certification and determining compliance with the USDA organic regulations. This does not include performing an inspection.	
205.501(a)(4) Revise (strikethrough removed text; underlined new text)	<u>Continuously use a sufficient number of qualified and adequately trained personnel, including inspectors and certification review personnel, to comply with and implement the USDA organic standards certification program established under the Act and the regulations in subpart E of this part;</u>	

<p>205.501(a)(4)(i) Add</p>	<p>Inspector qualifications and training — Certifying agents must demonstrate that all inspectors, including staff, volunteers, and contractors, have the required knowledge, skills, and experience to inspect operations of the scope and scale as assigned and to evaluate compliance with the applicable regulations of this part; and</p> <p>A. Certifying agents must demonstrate that inspectors continuously maintain adequate knowledge and skills about the current USDA organic standards, production and handling practices, certification and inspection, import and/or export requirements, auditing practices and skills in written and oral communications, sample collection, investigation techniques, and preparation of technically accurate inspection documents; and</p> <p>B. Initially and every year thereafter, inspectors must demonstrate successful completion of a minimum of 20 hours of training in topics that are relevant to inspection. Training may include material delivered via the NOP learning management system, certifying agents, or other relevant training provider; and</p> <p>C. Certifying agents must demonstrate that inspectors have a minimum of 1 year of field-based experience related to both the scope and scale of operations they will inspect before assigning inspection responsibilities;</p>	<p>Revision needed to implement OTA’s Position on <u>required knowledge and skills for inspectors</u>. The regulations need to include mass balance and traceability as required auditing skills, and also need clarification that import/export requirements are only required if relevant.</p> <ul style="list-style-type: none"> • Add specific reference to mass balance and traceability auditing skills • Add “if relevant” for import/export requirements <p>Revision needed to implement OTA’s Position on <u>one year minimum experience</u>. The regulations need to support more consistent understanding of how to measure and define the minimum requirement experience.</p> <ul style="list-style-type: none"> • Replace “field-based” with “relevant” <p>Guidance needed for determining best practices to defining and measuring “1 year of relevant experience.” See OTA’s Position on <u>one year minimum experience</u>.</p> <p>Guidance needed to define and clarify various “scopes” and “scales” for consistently evaluating whether personnel have the appropriate training and qualifications. See OTA’s Position on <u>scope and scale</u>.</p>
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OTA Requested Revision:

- A. Certifying agents must demonstrate that inspectors continuously maintain adequate knowledge and skills about the current USDA organic standards, production and handling practices, certification and inspection, import and/or export requirements (**if relevant**), auditing practices and skills (**including mass balance audits and traceability audits**), ~~in~~ written and oral communications **skills**, sample collection, investigation techniques, and preparation of technically accurate inspection documents; and
- C. Certifying agents must demonstrate that inspectors have a minimum of 1 year of **field-based relevant** experience related to both the scope and scale of operations they will inspect before assigning inspection responsibilities

205.501(a)(4)(ii)
 Add

Certification review personnel qualifications and training
 —Certifying agents must demonstrate that all persons who conduct certification review, including staff, volunteers, or contractors, have the knowledge, skills, and experience required to perform certification review of operations of the scope and scale assigned and to evaluate compliance with the applicable regulations of this part; and

A. Certifying agents must demonstrate that all certification review personnel continuously maintain adequate knowledge and skills in the current USDA organic standards, certification and compliance processes, and practices applicable to the type, volume, and range of review activities assigned; and

B. Initially and every year thereafter, all persons who conduct certification review activities must demonstrate successful completion of a minimum of 20 hours of training in topics that are relevant to certification review. Training may include material delivered via the NOP learning management system, certifying agents, or other relevant training provider; and

<p>205.501(a)(4)(iii) Add</p>	<p>Certifying agents must maintain current training requirements, training procedures, and training records for all inspectors and persons who conduct certification review activities.</p>	
<p>205.501(a)(5) Revise</p>	<p><u>Demonstrate that all persons</u> Ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, and decision-making <u>or certification review</u> responsibilities have sufficient expertise in organic production or handling techniques to successfully perform the duties assigned; i) Sufficient expertise must include knowledge of <u>certification to USDA organic standards and evidence of formal education, training, or professional experience in the fields of agriculture, science, or organic production and handling that directly relates to assigned duties.</u></p>	

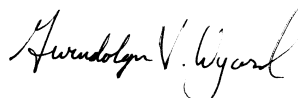
<p>205.501(a)(6) Revise</p>	<p>Conduct an annual performance evaluation of all persons who <u>conduct inspections, certification review, review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and</u> <u>or</u> implement measures to correct any deficiencies in certification services;</p> <p>(i) On-site evaluation of inspectors—Certifying agents must observe each inspector performing on-site inspections at least once every three years, or more frequently if warranted; and</p> <p>A. On-site inspector evaluations must be performed by certifying agent personnel who are qualified to evaluate inspectors;</p> <p>(ii) Certifying agents must maintain documented policies, procedures, and records for annual performance evaluations and on-site inspector evaluations.</p>	<p>Guidance needed for certifiers to align on scenarios when more frequent evaluations are warranted. See OTA’s Position on <u>on-site evaluations</u>.</p>
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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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cc: Laura Batcha
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