

Alliance for Organic Integrity
Strengthening Organic Assurance Globally
www.alliancefororganicintegrity.bio

Please accept our comments for the USDA/ AMS Proposed Rule: National Organic Program: Strengthening Organic Enforcement - **Docket Number AMS-NOP-17-0065; NOP-17-02**

Dear Dr. Tucker,

The Alliance for Organic Integrity (AOI) is a US 501c-3 non-profit organization, whose mission is to improve the quality of organic claims through education on best certification and accreditation practices, to seek to harmonize such best practices between schemes, to develop tools for preventing fraud and to share these tools and educational components with all those involved, so as to enhance trust in the organic guarantee system. As the organic market is international in nature, this requires an international effort.

Our approach to organic integrity is to promote best practices in organic farming, processing and marketing, and good inspection, certification and oversight. This will help to prevent non-compliances (NCs), rather than stopping them when they happen. Therefore, we wish to ensure that new regulations address the few weak or deficient operations, not the many that are already doing good. Thus, oversight needs to pay special attention to detecting when operators are weak and become vulnerable to NCs. New regulation should not obstruct good operators to do a good or even better job.

Our comments are directed, not only towards optimizing integrity through the regulatory environment, but also towards urging a harmonized approach with the EU Organic Regulation as it is the differences that allow unscrupulous exploitation of gaps and loopholes by those intent on criminal gain. It also causes duplication, confusion and additional cost for the smallest operations in exporting countries. The harmonization that we urge should be based on which approach creates the best regulatory practices and so protects organic integrity best. Harmonization based on the least common denominator should not be encouraged.

This paper is primarily directed at the consultation of the USDA/AMS Proposed Rule but also has some recommendations for EU Organic Regulation. Some of the explanations are of a general nature and common to both. The recommendations are clearly identified if relevant to the EU, as well as for the US/NOP.

We overall, strongly support the Strengthening Organic Enforcement (SOE) proposed rule. We thank the USDA Agricultural Marketing Service (AMS) and National Organic Program (NOP) for your faithful rendering of both Congressional intent and calls from the organic community to make regulatory changes to advance organic integrity. We urge the USDA to finalize the rule as soon as possible as these long-awaited improvements in the organic standards are much needed to address fraud in the organic supply chain and enforcement challenges.

We also wish to endorse and support the general comments by Alliance founding partner – IFOAM and for their long-standing global leadership; especially the focus on support for GGs.

We are especially pleased to see specific improvements to:

- Close certification gaps in supply chains and strengthening of non-retail labeling,
- Require full supply chain traceability of organic products,
- Specific requirements for use of trace-back and mass balancing to verify compliance,
- Greater specificity on protocols for foreign conformity assessments and equivalency,
- Application and requirements for risk assessment,
- Broadening of NOP oversight authorities to include those who are responsibly connected to certified activities,
- Greater scrutiny and oversight of certifier satellite offices,
- Operations must have fraud prevention plans,
- New training requirements for certifiers and inspectors,
- Required use of Import Certificates and standardized use of operator certificates through the OID,
- Grower Group regulations to strengthening ICS oversight,
- Required 5% unannounced visits.

All of this is very positive, much of which has been many years in the making and is much needed – as soon as possible.

Since the opportunities to make comments do not come too often, we find it our duty to provide selected comments on some areas where NOP is asking for additional feedback, as well as identifying areas where the rule can be improved to further strengthen organic enforcement while achieving harmonization between the different rules and regulations for operations that are certified to regulations other than USDA/NOP. We also conclude with some areas that we find missing that still need urgent attention.

1. Grower Groups, (GGs)

1.1 General Principles

First, both the US/NOP and EU are developing rules for, among other areas, Grower Groups. Whilst we very much support this, we are very concerned that some of the measures proposed are diverging, both from each other and from [IFOAM-OI consultation response to USDA/AMS](#). If unaddressed this will cause undue costs, confusion and undesirable complications like double record keeping, double certification, especially for the many GGs that seek both EU and US markets. We urge you and are committed ourselves, to contribute to on-going discussions to bring these two regulations into harmony, reflecting the mutual best practices for enhancing organic integrity. We are sure you will agree the importance of ensuring that such differences are as far as possible eliminated, or at least minimized.

We are very supportive of the IFOAM/NOP comments on GGs, as well. They do represent the broad consensus. However, we recognize that our recommendations may differ slightly from

*IFOAM and other highly respected organic colleagues. It is our intent to be both broadly aligned while also urging much greater attention, focus and requirements on; the **quality of ICS, quality of inspections and quality of re-inspections**, over specific numeric requirements. As improved quality of oversight and clear risk-based criteria, we believe will serve better for protecting organic integrity* of GGs in the longer run, which we believe is not contrary, but just more nuanced.

Second, it is critical to remain firm and clear that the purpose of GGs is and has been to provide a viable and economically feasible pathway into the certified organic marketplace for the most vulnerable organic farmers in the world: smallholders, who also represent the largest percentage of certified organic farmers worldwide. It is our duty to ensure that we do not harm, nor penalize or create new barriers to the many credible GGs around the world and to their continued fair access and participation. As said, it should be recognized that the majority of Grower Groups are certified to both US and EU systems.

It should further be recognized that the purpose of GGs is not only to demonstrate compliance but also stimulate internal development. The organic premium needs to pay for access to training and similar inputs, and should not have to be diverted to cover unnecessary extra costs and arbitrary bureaucratic structures. This not only allows for better income and improvement of livelihoods, but also for continuous improvement and, for example, adaptation to climate change.

Next, we have encouraged EU to copy USDA language 205.201 that the ICS should describe how training, production and handling inputs, and other resources are procured and provided to all grower group members and personnel. Their availability is a main strategy, incentive to prevent non-compliances.

Additionally, we would encourage EU and US to re-introduce a very important principle of ICS, group responsibility. **This should be similar to the introduction in USDA 205.400(g) and rephrasing in EU DA amending controls Art.1(1)(b)(iii)(h)(ii) fifth indent, duty of members to ‘immediately inform the ICS manager on suspected non-compliance in and around their own and other group member’ fields that are to be certified’.**

We also urge NOP to create pathways for livestock and livestock products to be included in GGs, as many already sell honey and other livestock products, including farmed fish. NOP prohibition will create barriers to trade and limit access to third country products for US processors and consumers alike. As, it is critical that regulators, both NOP and EU must understand fully the financial implications of any new requirements on some of the poorest farmers in the world especially when they are providing (low value) raw materials to the market.

Finally, we wish to support one additional critical and unaddressed issue that is being raised by US organic farmer and NGO groups, which are aware of how very large entities, both in the US and Global South can use predatory contracts to unfairly capture vulnerable farmers into non-competitive marketing arrangements.

It is our purpose in raising this issue in our AOI comments to both support farmers calling for this to be addressed in NOP regs and to build greater global awareness that mechanisms and

protocols need to be developed to address these concerns; not only for Global South but for US small farmers, as well. We are fully aware this is not currently considered in NOP domain, but if this is not raised, then it has no chance to be debated in such public forums and to find meaningful protections and solutions.

We support establishing procedures to ensure that each grower group member has ownership, individually or collectively, of the livestock, livestock products, and crops they produce, and has an opportunity for ownership stake in any GG processing facilities used to process their products, where appropriate. We are fully aware that this would need to be a new area of development that is currently missing, but does reflect the core IFOAM principle of fairness.

We strongly recommend that US/NOP rules should recognize and reinforce these central tenets, and ensure that this model is preserved for such smallholders. We strongly believe that many organic farmers and consumers appreciate the concept of solidarity as part of organic integrity

1.2 NOP GG Questions:

- Should NOP quantify exact maximum number of members of a GG?

No, we do not support requiring exact maximum number of members, but focus the efforts on improving the ICS functionality, as this is key to credibility. However, we do subscribe to the notion of sub-groups or clusters of GG members as units that can be de-certified should certain parts of the GG not comply while the rest does. That size to be determined by factors like proximity of each other, internal inspector area, common storage, management logic. All factors are to be considered, described and documented in the ICS of the GG and verified by the external inspector.

- Should NOP define maximum operator size and sales to be a GG?

No, imposing such global numbers would be very difficult as local conditions, circumstances vary so widely world-wide. We would support GGs establishing these for themselves with their certifiers verifying their (also organisational) logic. We oppose extreme variations, which could shift GG power dynamics, but generally support the allowance of some larger operators, who are individually certified to remain in the GG, when they are lead farms or members wish this to help round out volumes to meet markets demands.

- Should NOP define specific geographic proximity?

No, we would prefer that the GG themselves define this based on their local geography, management and marketing needs. This can be then verified by their certifiers. Arbitrary limits will only further exacerbate their organizational challenges, reducing the efficiency and effectivity of the ICS. We are also aware of existing GGs which could be forced to break-up due to Country borders being defined as geographic proximity limits, therefore in our opinion, country borders will not always work for this as well, as GG members can easily be across a border while participating in common cropping systems and geography. Forcing them to create

another GG just because they are across the river or border is again creating artificial boundaries that can harm the functioning GGs.

1.3 List of Specific Concerns and Recommendations:

1.3.1 Re-inspection rates

205.403(a)(2) iii: We strongly urge US and EU to harmonise their approaches to re-inspection rates, to achieve equivalence, avoid different ICSs per group, different re-inspection rates, different records, etc. We advise to return to the IFOAM square root approach as the minimum requirement for re-inspection rates.

Having a fixed number for all operators undermines the importance of risk assessment, by the GG itself and by the external inspector/CB. Higher inspection rates do not lead to better integrity; that is an issue of a good ICS evaluation, a good risk assessment, the selection of the farms to be visited, the competence of the inspector, the quality of the farm re-inspection. When re-inspections detect anomalies, a root cause analyses should determine to what extent the entire, or parts of the group are to be sanctioned.

Recommendation - Keep $1.0\sqrt{\quad}$ for normal situations, $1.2\sqrt{\quad}$ for medium risk and $1.4\sqrt{\quad}$ for high-risk situations as minimum re-inspection rates, based on risk assessment.

Recommendation - A minimum of 10 re-inspections per GG is good to be able to do or confirm the risk assessment (it is in the EU draft, US is recommended to include this).

How farms are selected for re-inspection:

Recommendation EU and US: Approximately half of farmers are selected based on being high-risk and the other half at random, including diverse geographical locations.

Regarding GG own risk assessment:

Recommendation EU and US: GG are to have their own (annually updated) risk assessment and the internal inspections are to refer to these risks. The GG ICS's internal risk assessment is evaluated and confirmed during the external inspection, as part of the ICS evaluation.

On re-inspection, auditing techniques:

Recommendation to EU and US: Regulations and guidance should include witness and compliance audits as usual techniques for re-inspections. Each farm re-inspection visit to be documented individually, referring, amongst others, to the risk assessment.

On residue sampling:

The US/NOP does not require exact numbers for residue sampling, the EU has proposed this. The EU introduces a very high rate of sampling, 2%. Experience learns that 2-3 samples per GG based on risk assessment is sufficient. GG do not have the funds to pay for 10 (500 farmers) or 40 samples (2000 farmers) every year.

Recommendation; both EU and US to refer to residue testing based on risk assessment. Best is no absolute numbers mentioned, otherwise suggest 2-3 per year, based on documented risk assessment.

(We recommend language stressing approximate percentages or numbers opposed to strict numbers, as this allows for some needed flexibility based on performance and compliance opposed to strict numbers, that may encourage manipulation).

1.3.2 Single crop (commodity) focus:

NOP proposed rule seems too focused on single crops and not on whole farm conversion. (EU has whole farm conversion in 2018/848 Art.9.2 but allows single fields in 2018/848 Art. 9.7.) Single crop, single field certification may be ok for tree crops but it is not ok for annual crops. Whole farm conversion is to be strongly encouraged as a risk mitigation strategy but not mandatory.

For risk management purposes:

Recommendation EU and US: the internal and re-inspection of smallholders should be of the whole farm.

Recommendation US: USDA harmonises with EU language in 2018/848, art.36, 1(f) that a Group of Operators (or GG), can deal with different products but also (EU IA on controls Art.5) a farmer can be a member of one ICS only for per product.

1.3.3 Conflict of interest:

Draft US rule and EU legislation are not harmonized – it should be for this difficult topic. Please take into account the second paragraph of 1.1 General Principles, above, that a key role of GGs is to facilitate farmers to continually improve. It is more realistic to request that ICS have policies regarding conflict of interest (COI), that these are managed, and that this is verified by the external inspector. Conflicts of interest, in the wider definition, always exist in groups. Not only among ICS officers but also boards and group management. They should be identified and mechanisms in place to make sure that decisions are fair and impartial, as described by ISO.

Recommendation EU and US: ICS to have policy on conflicts of interest, to be evaluated during the annual external inspection. Both rules should have, as far as possible, identical language.

1.3.4 Storage exemption:

US proposes exemption from inspection for storage. Storage is a source of contamination issues like mosquito, rodent and insect sprayings, or storage of pesticides used on non-certified parts of the farm. In case only one field of the farm is organic there should be separate storage for organic crops.

Recommendation US: Areas where organic products are stored to be part of (internal and external) annual inspection.

Recommendation EU and US, in case of split operations: organic products to be stored in organic only spaces.

1.3.5 205.2 – clarifications of new definitions.

- a. **Grower Group member-** We recommend (see earlier) expanding the USDA definition to allow for a member to grow more than one crop within the ICS of the GG and be treated as a whole organic farm system that requires crop rotations, etc., not just one crop only.
- b. **Grower Group Operation-** We would expand this to also include production of more than a single crop, as members may grow more than one crop for the ICS of the group, even within one field (like vanilla and pepper in coffee).
- c. **Grower Group Production Unit –** For US we suggest this being called a “GG Sub-group” to avoid confusing the proposed GG Production Unit term with EU language that defines production unit as a single operator, or a GG member or even a field.
- d. Encourage EU to refrain in practice from the term Group of Operators and use the term Grower Group instead, or both switch to **Smallholder Groups**.

2. Import Certificates

We strongly support the compulsory requirement of import certificates, (IC)s for all imports, while recognizing that such data is only as good as the physical inspection and check of mass balance that verified this.

However, we are very concerned about proposed allowance for imports to not be accompanied by this IC, as this will create an on-going opportunity for fraud by accepting such products into the market, only to learn too late that it was not compliant. We urge all imports to include the IC

to prevent any such fraudulent opportunities. We also feel that 30-day for certifiers to issue an IC is also too long and should be closer to “real-time” as possible. In the EU system CA provide such ICs (Certificate of Inspection) within 24-hours, there is a drive to provide these even before shipment. When those exporting to the EU can manage this, why not exports to the US?

3. Non-Retail Product Labeling

We would support, in addition to 205.307(a), the non-retail product labeling must include an identification of the (last) certified operation i.e. move 205 307(b) (3) to 205 307(a).

4. Inspections of Ports

We recognize that organic oversight and verification for organic products entering and exiting ports remain one of the largest gaps with some of the biggest impacts on organic integrity. We strongly urge clear and comprehensive regulations and guidance regarding the protection of organic integrity as organic products travel through ports. We also recognize that organic products can travel through multiple ports were they are vulnerable to commingling and exposure to prohibited materials; especially for bulk products that are aggregated from multiple production sites in multiple countries.

These regulations must cover loading, unloading, storage and aggregation, handling of pest infestation and avoidance of any country-level required prohibited fumigation requirements to ensure organic integrity can be maintain across the entire supply chain; especially for such bulk products as grain, which requires auguring and transfer from ships to storage to ground transport on the way to final importers and markets. We are pleased to see specific language requiring coordination and cooperation between US Port Authorities and NOP; this of course also requires greater inter-USDA agency coordination between NOP and APHIS to ensure organic regulations are followed when addressing pest infestations, as well. However, additional special focus and guidance must be maintained for those ports outside of the US to ensure products bound for US import arrive to US ports with the confidence that they have maintained their integrity throughout foreign ports along the way, as well.

For various reasons (e.g. trace back to primary production location, avoidance of mandatory fumigation at ports) it is important that the Country of Origin Declaration travels with the goods. During all shipments the organic nature of the goods is to be included on transport slips, Bill of Lading, Ship logs, Airway Bills, etc. When available for the commodity, the HS code (organic custom codes) must be used.

5. Training

We support NOP proposed new training requirements for certifiers and their inspectors. However, we would add the following additional recommendations:

- These new requirements should ensure that the specific individual training needs of inspectors and certifier reviewers also include and reflect their personal training priorities as identified in their annual reviews, as well as any mandated macro training requirements. It is important that any such mandated training requirements also reflect these personal growth and training needs to ensure continual improvements to their professionalism and job competency. CA should regularly review the performance of their inspectors, for example through witness auditing once in 3 years.
- We would urge that Grower Group certification should become an additional scope for certifiers, as this requires very specialized knowledge and experience necessary properly oversee this complex and important category of organic certification and finally,
- We would recommend that this whole section of new training requirements, including these two additional recommendations, also explicitly apply to NOP staff, as well. It is critical that we continue to strive toward whole systems approach that require consistency of knowledge, application and interpretation from operators through certifiers and on to accreditors, as well.

6. Operator Certificates

We support the required use of standardized operator certificates linked to the OID; while this may be painful for those CBs which have invested much time, training and expertise into their own customized certificates; we strongly feel that in the long run this new requirement will strengthen organic integrity and remove one more opportunity for fraud and/ or confusion.

We also seek clarification regarding the use of expiration dates and expiry of certificates, which could then be removed from OID, if not renewed in required timeframe. It is our experience both with EU regulations, as well as review of OID that when certificates do not expire, this allows room for abuse and fraud when certificates can be found that have not been renewed for several years or are linked to certifiers, whom have been already been suspended. We are also aware of industry and certifier experts who oppose this additional requirements of expiry and remain open to better understanding their rationale, but in our experience it seems common sense to impose discipline and timely order through these additional requirements.

7. Missing components

In conclusion, we make the following additional recommendations regarding areas that we strongly feel are still missing from this much improved set of proposed regulations, all of which are aimed at strengthening organic enforcement. These recommendations are aimed at encouraging much greater coordination, cooperation and harmonization of best practices of regulatory oversight of the two largest organic markets – NA and EU.

- We recommend special focus on better identification and tracking of organic products that are certified by both EU and US, to ensure that mass balances and trace backs are successfully preventing “double counting” of same organic products.

- We strongly urge establishment of EU/US protocols that triggers notification and investigations when either equivalency partner threatens to and/or suspends CAs/CBs for major non-compliances; especially when these CAs/CBs are accredited by both partners.
- Include specific guidance for certification of brokers/traders outside of the US that are currently exempt and not eligible for equivalencies.
- Address on-going concerns about lack of consistency between certifiers over material review determinations.
- Address urgent needs to develop much more timely and transparent NOP complaints systems, as stakeholders have lost much confidence in the current complaints process.
- **Finally, we strongly urge on-going development of a much more harmonized approach between US and EU; using upcoming renewal of equivalency agreements as an opportunity for more comprehensive and transparent stakeholder dialogue aimed at mutual adoption of best practices.**

We wish to thank the USDA/NOP for this opportunity to provide comments on what we generally consider the most significant improvements to OFPA, since its establishment. We are also aware that consistent implementation across all CBs, is also critical and is where real change and any additional gaps begin to emerge. We are committed to continuing to engage in this process as it moves forward and offer our expertise and will be pleased to answer any specific clarifications regarding our comments, as requested.

Finally, continuing to fully engage the wisdom of the broadest organic community; including the NOSB, as these proposed regulations move forward is critical to our mutual goals of protecting and enhancing organic integrity.