



October 5, 2020

Dr. Jennifer Tucker  
Deputy Administrator  
National Organic Program, USDA-AMS-NOP  
1400 Independence Avenue, SW  
Washington, DC 20250

RE: Docket Number AMS–NOP–17–0065; NOP–17–02, RIN 0581–AD09; “National Organic Program; Strengthening Organic Enforcement” proposed rule

Dear Dr. Tucker:

On behalf of the nearly 200,000 family farmer, rancher, and rural members of National Farmers Union (NFU), I am writing regarding the “National Organic Program; Strengthening Organic Enforcement” proposed rule. NFU is a general farm organization whose members are involved in all forms of production agriculture, including organic agriculture.

NFU’s grassroots, member driven policy supports “the enforcement and monitoring of the national organic standards promulgated by the U.S. Department of Agriculture (USDA) and the prosecution of individuals or entities who knowingly sell or import nonorganic products as certified organic.”<sup>1</sup> As the organic sector has grown and its supply chains have become increasingly global and complex, there has been an increasing need to strengthen oversight and enforcement. Organic fraud economically harms farmers and ranchers that adhere to the law and reduces consumer trust in the USDA organic seal.

Thus, NFU welcomes the introduction of this long overdue rule, which can help maintain the integrity of the USDA organic seal. The rule takes important steps to reduce the types of uncertified entities in the organic supply chain operating without USDA oversight, such as importers, traders, and brokers; strengthens the import certification system for all organic products entering the United States; and clarifies the USDA National Organic Program’s (NOP) authority to oversee certification activities.

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<sup>1</sup> National Farmers Union, *Policy of the National Farmers Union*, (March 2020).

We urge USDA to finalize this rule, with an emphasis on robust procedures to deter and eliminate fraudulent organic imports, while ensuring an even playing field for domestic family farmers and ranchers, cooperatives, and small farm retail and food establishments. While NFU is generally supportive of the rule, the following comments identify some areas of concern or requested clarification.

### **Imports to the United States**

NFU policy supports “Requiring increased monitoring and testing of organic products originating outside the United States to ensure those products comply with USDA organic standards” and “Increased funding, monitoring, and inspections to better protect the domestic organic market from fraudulent imported agricultural products.”<sup>2</sup>

NFU generally supports the section of the rule on “Imports into the United States.” Increased organic import oversight is essential to protecting American family farmers and ranchers and maintaining consumer trust in the organic seal. NFU supports the expanded use of certificates for countries where the United States does not have an organic equivalency, regardless of the country of origin; currently, NOP Import Certificates are only used for organic products imported from countries that NOP has determined to be equivalent. This is an important step in ensuring that shipments are auditable.

While broader use of import certificates should strengthen the audit trail, NFU is concerned that NOP Import Certificates alone are not enough to identify and deter fraud. We urge NOP to develop and implement a plan to identify and address fraudulent certificates in a timely manner.

### **On-Site Inspections**

NFU generally supports standardizing requirements for on-site inspection of organic operations by requiring certifiers to conduct unannounced inspections of at least five percent of the operations they certify annually, and conduct mass-balance and traceback audits during on-site inspections. For such a system to function, certifiers must conduct these unannounced inspections during applicable periods of time depending on the operation, rather than at times most convenient for the certifying agent. For example, to ensure organic operations comply with the Pasture Rule, certifiers would need to visit a dairy during the grazing season. Additionally, we seek greater clarity about the nature of unannounced inspections: the use of

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<sup>2</sup> Ibid.

random versus risk-based inspections, how “risk” and “high-risk” is defined, and what guidance will be provided to certifiers to ensure the effectiveness of unannounced inspections.

### **Certificates of Organic Operation**

NFU supports the rule’s proposal requiring certifying agents to provide organic certificates that are uniform in appearance. The current variability in appearance and format of certificates, depending on the certifying agent originating the certificate, makes the likelihood of alteration or fraud more likely. It also leads to the issuance of certificates that do not comply with USDA organic regulations. The proposed rule indicates that a USDA-hosted electronic system known as the Organic INTEGRITY Database (INTEGRITY) would be used. This single, centralized database for generation and validation of certificates would be helpful in reducing fraud and improving the efficiency of certificate validation.

### **Grower Group Operations**

Grower groups allows certain crop and handling operations with multiple member growers to be certified as a single producer. NFU agrees with the need to address organic fraud with respect to grower groups given the complexity these groups pose to issues of traceability. But given that grower groups are intended to serve the needs of under-resourced individuals, the regulations must carefully consider potentially onerous restrictions that would limit access to markets.

AMS poses several questions regarding the certification of grower group operations, including whether there should be limits on gross sales or field sizes of individual grower group members, a maximum number of members permitted in a grower group operation, and any limit on geographical distribution of members. NFU believes that there must be reasonable limits on the size and scope of grower group operations. Grower groups ought to serve as a tool to help individuals with limited resources access markets; these groups should never serve as a workaround for large, well-capitalized entities to access markets.

AMS proposes a definition for “grower group operation” as follows: “A single producer consisting of grower group members in geographical proximity governed by an internal control system under an organic system plan certified as a single crop and/or wild crop production and handling operation.” NFU requests AMS clarifies the term “single crop.” We are concerned that the term could be understood as limiting group members to growing only a single crop, restricting grower group members from using crop rotations and other agricultural best management practices.

## **Supply Chain Traceability and Organic Fraud Prevention**

It is essential that consumers can trust in the certified organic label. Thus, supply chain traceability is critical to ensuring the integrity of product from its source to the consumer.

This section of the proposed rule suggests adding and defining a new term: “organic fraud.” NFU suggests revising the definition. The proposed definition is:

*Intentional deception for illicit economic gain, where nonorganic products are labeled, sold, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)).”*

We recommend removing the phrase “for illicit economic gain.” It is not necessarily of consequence whether a fraudulent act resulted in economic gain; rather, the central concern is intentional deception and misrepresentation of product.

### **Additional considerations: scale and risk**

Throughout the rule, AMS notes the importance of addressing “high-risk” situations and operations with respect to its regulations, and we commend AMS for these considerations. But the proposed rule is not very clear about the meaning of “high-risk.” The following are several examples of proposed new requirements with respect to risk:

*Annually, conduct risk-based supply chain audits to verify organic status of a product(s) of a certified operations(s) it certifies, back to the source(s)*

*A copy of the criteria to identify high-risk operations and products; and procedures to conduct risk-based supply chain audits, as required in §205.501(a)(21); and procedures to report credible evidence of organic fraud to the Administrator.*

NFU supports these requirements and acknowledges that while the proposed rule does not define “high-risk,” it does include a list of possible risk-assessment criteria. While vulnerability criteria may change over time, the rule should create some common understanding of “high risk” to guide certifiers.

Additionally, smaller, less complex operations in the United States do not pose the same risk as larger, more complex operations. While scale should not be the only consideration for a risk assessment, the issue of size and scale should be accounted for with respect to risk-assessment criteria.

It is essential that no part of the new regulations disadvantage smaller scale farmers and ranchers, small producer cooperatives, and small-scale processors and food establishments.

## **Conclusion**

Family farmers and ranchers depend on USDA and the accredited certifying agents to enforce the organic program's NOSB-driven standards. This proposed rule, with some minor modifications, should strengthen those standards.

If you have any questions or would like to further discuss NFU's position, please contact Aaron Shier, NFU Senior Government Relations Representative, via e-mail at [ashier@nfudc.org](mailto:ashier@nfudc.org) or by phone at 202-554-1600.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Larew". The signature is fluid and cursive, with the first name "Rob" being more prominent than the last name "Larew".

Rob Larew  
President