OHIO ECOLOGICAL FOOD OEFFA AND FARM ASSOCIATION

October 2, 2020

Jennifer Tucker, Ph.D.
Deputy Administrator, National Organic Program
USDA-AMS-NOP
1400 Independence Ave., SW, Room 2642-So., Ag Stop 0268
RE: AMS-NOP-17-0065; NOP-17-02

Dear Dr. Tucker:

The Ohio Ecological Food and Farm Association (OEFFA) is a grassroots coalition of more than 4200 farmers, gardeners, retailers, educators, and others who since 1979 have worked to build a healthy food system that brings prosperity to family farmers, safeguards the environment, and provides safe, local food. Certified organic farmers make up the bulk of our membership, as well as the bulk of our policy advisory council. OEFFA's Certification program has been in operation since 1981. OEFFA certifies nearly 1,200 organic producers and food processors, in a twelve-state region, ensuring that these operations meet the standards established for organic products, and collaborating with partners such as the Accredited Certifiers Association (ACA) and International Organic Inspectors Association (IOIA) to foster consistency and clarity both in the way we conduct ourselves, and in what we expect from producers and handlers we certify, as well as from our colleagues at the NOP and NOSB. We participated in drafting comments on the Strengthening Organic Enforcement Proposed Rule with both the ACA and National Organic Coalition (NOC) and generally support those organizations' comments. We also received and incorporated into our comments input from the OEFFA Grain Growers Chapter.

OEFFA employs education, advocacy, and grassroots organizing to promote local and organic foods, helping farmers and eaters connect to build a sustainable food system. We work collaboratively with groups such as the Organic Farmers Association, NOC, and the National Sustainable Agriculture Coalition to effect positive food systems change. We have heard from many of our members and certified operations over the years that they desire greater enforcement of organic standards, consistency of interpretation, and prevention of organic fraud and we work hard as a certifier toward those aims. We want to support our farmers and handlers in their efforts to protect organic integrity and educate their communities about its benefits, its rigor, its strong values of transparency and continuous improvement.

It is in this spirit that we respectfully offer the following comments on the Strengthening Organic Enforcement Proposed Rule (SOE):

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SPECIFIC RESPONSES TO PROPOSED AMENDMENTS

1 - Applicability and Exemptions from Certification

We appreciate the revision of the definition of "handle" at 205.2 to include a list of activities that are considered "handling;" this revision will close several important loopholes in existing standards. However, both our staff and the OEFFA Grain Growers' Chapter noted that absent from this list are "private labeling" and "transloading," both of which handling activities are frequently done by uncertified entities and carry high risk to organic integrity. Private label owners who work with certified copackers must themselves be certified to ensure complete supply chain traceability and allow for successful mass balance audits (especially when the private label owner supplies ingredients to the copacker). We propose adding both terms to the list and revising the definition to [additions/changes in red]:

> Handle. To sell, process, or package agricultural products, including but not limited to trading, facilitating sale or trade, brokering, private labeling, repackaging, labeling, combining, containerizing, storing, receiving, loading or transloading.

To minimize confusion around the slightly different definitions of "handler" and "handling operation," which are effectively synonymous in usage, we suggest merging the two definitions in the following manner:

> Handling Operation (Handler). Any operation or portion of an operation that handles agricultural products, except for operations that are exempt from certification.

Virtual transactions are mentioned in the definition of "Retail Operation," but are not themselves defined. We propose adding the definition:

> Virtual Transaction. Any form of transaction that does not occur in person.

The revised retail operation exclusion does not address certain common practices. Some retail establishments repack bulk organic products into smaller packages and add labels showing "certified organic" or the USDA Organic seal – which should be certified activities. Similarly, a warehouse operated by a retailer should be included on the retailer's OSP and inspected (and listed on the retailer's certificate), since it is not the point of retail sale. And it is unclear if products sold by an excluded retailer may be used as ingredients in organic products – for instance, if a small-batch brewery buys organic vanilla beans from a local grocery store for its organic Christmas ale. To address the former concern, 205.101(b) could be revised to:

> A retail operation or a portion of a retail operation that sells, but does not process or otherwise handle, organically produced agricultural products.

It is our understanding of the current wording that certain online retailers, which are really distribution centers based on their activities, need to be certified as do all licensed commodity dealers. We support this inclusion of critical components of the organic supply chain. Certain operations should properly be exempt, including milk haulers, cold storage facilities and refrigerated transport, which handle organic products under the supervision of other certified operations. We suggest revising 205.101(e) to clarify that operations responsible for transloading bulk unpackaged products such as grain into a different container, a high-risk activity, must be certified, and to clarify that importers and exporters are not exempt:

> An operation that only stores, receives, and/or ~~loads~~ transports agricultural products, but does not process, own, or alter such agricultural products. An importer or exporter of record is not exempt.

2 - Imports to the United States

The current use of "responsible for accepting" for "Organic importer of record" at 205.2 is insufficiently precise and could refer to the owner/buyer, the person unloading the shipping vessel, or even a customs broker. Does "accepting" involve physical acceptance, ownership, or logistical management responsibility? A possible revision to clarify this could be "legally and financially responsible." A similar lack of clarity exists for country of origin, which is commonly understood to mean the country from which an import travels to the US but should, for supply chain traceability, be defined as where a product was grown or processed. Both the organic exporter and the importer of record must be certified to provide traceability.

Section 205.273 contains two terms which may result in inconsistency of interpretation and enforcement. "Shipment" could be interpreted to allow a single import certificate to cover multiple *unspecified* lots of the same product and should be replaced with "lot." Additionally, each lot should be *accompanied by* a valid NOP Import Certificate "or equivalent data source as specified at 205.273(e)" to avoid the provision of inadequate data sources by well-meaning importers.

The addition of "as specified at 205.273(e)" should be made also in 205.273(a):

> … or approve a listing in an equivalent data source as specified at 205.273(e) ~~(e.g., a third-party export system)~~.

And in 205.273(b):

> … issue the NOP Import Certificate or equivalent as specified at 205.273(e)...

To clarify whose responsibility it is to verify a data source as equivalent (USDA, not a certifier or certified operation), 205.273(e) should be revised as follows:

> 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, as determined by the USDA.

Operators at ports need to clean containers before loading organic shipments, which means they need notification of organic shipments ahead of time to document that equipment cleaning. The OEFFA Grain Growers' Chapter noted that, just as a domestic grain buyer would require a Transaction Certificate prior to the buyer taking possession of organic grain, so should a NOP Import Certificate *precede* the international grain shipment. The proposed rule allows the products imported into the US to be "associated with" an import certificate that can be uploaded into ACE up to 10 days post-importation. This allowance is impractical, unacceptable, and could lead to further fraudulent grain entering the stream of commerce as organic grain. The OEFFA Grain Growers' Chapter asked that the NOP Import Certificate precede the shipment for bulk commodities by 10 days so that all proper control points are in place on both ends of the shipment, similar to the common domestic transaction certificate process. The shipment should be identified as organic to Customs and Border Protection upon entry as well as accompanied by the import certificate. It would be also helpful to specify, in guidance, the list of documents needed to verify compliance so that operators, certifiers, and inspectors interpret this regulation consistently from the beginning.

Thirty days is too long and could result in import certificates (or equivalent) being issued ex post facto – after the shipment has already arrived at port. Additionally, the two separate deadlines mentioned in the rule, 30 days to issue an import certificate and 10 days to upload it, will likely cause confusion. In current practice, certifiers typically issue import certificates within a few days. However, **to truly mitigate the risk of shipments arriving without adequate documentation and eliminate retroactive certificate issuance, it must be the responsibility of the exporter to submit a complete request for an import certificate before the shipment arrives**. We therefore propose replacing "be associated with" with "be accompanied by" in 205.273 and striking "~~within 30 calendar days of receipt~~" in 205.273(b). The importer of record and any other persons associated with the import process can only verify documentation for a shipment if the documentation is present. This is particularly crucial for perishable items which may move several steps along the supply chain in the first day or less after import.

We anticipate that operations who frequently import products will need to keep a nearly complete list of information to request an import certificate on file with their certifier so that when they have finalized information about a particular lot (e.g. weight as it leaves a foreign port) they can quickly add that to existing information, submit the request, and the certifier then could respond by issuing the import certificate promptly because the request is complete. Turnaround time will need to be especially

brief for imports shipped by air. But the risks of these products moving into the U.S. without adequate documentation are too high not to require they be accompanied by an import certificate.

3 - Labeling of Nonretail Containers

We appreciate that AMS has added requirements to the labeling of nonretail containers and broadened their purview to all nonretail containers of organic products. However, to allow the full supply chain traceability required by SOE, additional labeling is needed. The "certified organic by ***" (COB) statement is meaningless without identifying the specific operation that is certified organic. If OEFFA Certification received a question about box of watermelons showing only a lot number and our name as certifier, we would not be able to provide any information because we do not record our certified operations' lot numbering systems in a searchable database. Even if we did, we do not maintain the records to track individual certified lots – rather, we verify the recordkeeping systems the operation uses and conduct annual audits to ensure those systems are successful. Additionally, many operations use similar or identical lot numbering systems (e.g. SKU plus Julian date) and we would not be able to distinguish between those.

Therefore, it is essential that the certified operation also be identified on the nonretail container. Ideally, this would include both business name and address, as is included on retail labels. (Name or address alone is insufficient to positively identify an operation, as many operations have similar names and sometimes multiple operations share an address.) We recognize that many businesses consider certain business names along the supply chain to be confidential and in deference to that we propose that **the certified operation's NOP ID (as listed in the Organic Integrity Database) could be used in lieu of the business name, alongside the lot number and COB statement**. This would allow certified operations further along the supply chain, their inspectors, and their certifiers to conduct the necessary verification without revealing in an obvious manner any confidential information. **There is no completely private or confidential way for nonretail containers to be adequately traced to their producer/handler**. 205.307(a) would then be revised as follows:

> … (2) The name and contact information, or NOP ID, of the certified producer of the product, or if processed, the last certified handler that processed the product; (3) The statement, "Certified organic by * * *," or similar phrase, to identify the name of the certifying agent that certified the producer of the product, or, if processed, the certifying agent that certified the last handler that processed the product; and (4) The production lot number...

Revising 205.307(a) as suggested would also clarify that the operation identified on the label should be the last handler to process, package, or label the product. A certified warehouse or distributor that does not alter the product or packaging should not be listed on the label. It would be acceptable to leave clause (3) of 205.307(b) in place, as this would allow both NOP ID and name/contact information to be

printed on the label, but it may be simpler to remove the clause from the *may* list if the certified operation *must* be identified on the label.

Finally, we suggest moving proposed 205.307(b)(1) to 205.307(a)(4) and adding "as applicable" so that directions such as "do not fumigate" are clearly marked; this would address a significant integrity risk:

> 205.307(b)(4) Special handling instructions, as applicable, needed to maintain the integrity of the product.

4 - On-Site Inspections

We support the additional language mandating that certifiers must have the capacity to conduct unannounced inspections throughout their coverage regions. We currently require through our certification policies that inspectors conduct mass balance and trace-back audits at all annual inspections and exit interviews at all inspections.

5 - Certificates of Organic Operation

The suggestion that organic certificates all be generated from INTEGRITY is an interesting one. Certainly, the potential for fraudulent certificates would greatly diminish if all organic certificates share a single format, and we support this aim. Having publicly searchable certificates would be an especially useful and strong enforcement tool. However, we have several practical and logistical concerns with the proposed changes to 205.404(b-c).

First, we have questions about what data will need to be submitted to INTEGRITY. Currently, not all data fields for which we can submit data to the Organic Integrity Database (OID) are required, and we do not have the means to complete these optional fields from our internal database and the information we currently track. There are also items we include on certificates now, which we think are very important for verification including traceability and mass balance audits, such as:

- Slaughter eligibility of dairy animals; and
- Brand names of products

These items do not have a corresponding data field in OID. Without knowing what data fields will be required, it is difficult for us to evaluate both the efficacy of INTEGRITY-generated certificates and our ability to comply with this provision. Will it be necessary for all certifiers to upload data using the NOP Taxonomy alone? As stated by the ACA Working Group that recently developed Best Practices for Listing Products on Organic Handler Certificates, not all certifiers presently use the NOP Taxonomy due to its limitations (especially regarding specificity for handled products such as fruits and vegetables). Certain

organic services provided by handlers which are commonly and appropriately listed on certificates, such as custom seed mixing, have no place in the current taxonomy. The taxonomy itself may need some reworking before it will be appropriate or practical for certifiers to use it exclusively to generate certificates. Certified acreage is another very important type of data that is not consistently reported to OID, in large part because of confusion surrounding what acreage should be reported (total land certified or total certified crop area, which differ significantly when double- and triple-cropping is used). Depending on what data INTEGRITY will require, certifiers may not (yet) have the administrative capacity to comply with this provision.

Second, we are concerned about requiring certifiers to generate certificates in INTEGRITY for reasons of efficiency and customer service. Elsewhere in SOE, we will be required to update INTEGRITY with information regularly (currently we upload data monthly). Without an API (application programming interface) or other technological solution from AMS, we would need to manually upload data for each operation every time we need to issue a certificate. The administrative burden of doing so – which duplicates work already done to update our internal database for tracking what we certify for each operation – would be significant and the fact of data entry being manual will increase the potential for errors. **This type of redundancy does not improve enforcement or organic integrity; instead, it weakens our ability to work toward those aims because we need to devote person-hours to duplicative data entry rather than risk assessment, file review, investigations, policy development, or any of the other work we do to support integrity.** Customer service is also weakened when more steps are required to do the same work (and not worthwhile without added risk prevention) and because certifiers become reliant on a system beyond their control. If INTEGRITY crashes or requires maintenance, we cannot create certificates until AMS finds a solution or completes the maintenance. This would affect not only our ability to quickly and efficiently provide updated certificates to certified operations but also may affect our ability to comply with the proposed change at 205.662(e)(3) which requires updating INTEGRITY within 3 business days of the effective date of suspension, revocation, or surrender.

Third, we believe that mandating certificate generation from INTEGRITY will make use of certificate addenda ubiquitous among certifiers. Addenda will be needed to provide confidential and private label information, which is necessary for traceability, in a format that will be acceptable to businesses with confidential information (i.e. not stored in a publicly searchable database). Addenda will also be needed for certifiers to provide information about international equivalencies and certifications that are not tracked in OID. It is unlikely that certifiers will use a single consistent format for these addenda. We wonder if the presence of these addenda will result in a similar degree of confusion to what already exists in the marketplace, as they will not be publicly searchable and will not have identical format throughout the industry. That confusion could be mitigated by allowing certifiers to continue to generate their own certificates but requiring a consistent format (such as the format used by INTEGRITY-generated certificates). **All certificates, including those generated by the certifier should include a url**

link to the INTEGRITY listing for the operation, which would facilitate the same public verification as that proposed in the rule.

As a compromise, we suggest that rather than requiring all organic certificates to be generated from INTEGRITY, 205.404(b) could state:

> ... The certificate of organic operation must be generated from INTEGRITY or match the certificate in INTEGRITY in content and design...

Either the certificate generated from INTEGRITY or the certificate generated by the certifier (which matches what INTEGRITY generates) may be given to the client and used for verification. This would allow certifiers to generate certificate addenda in tandem with the certificate that matches the publicly available information in INTEGRITY, which would be a far more efficient process and would not compromise the goals of consistency and traceability espoused by SOE.

Finally, we question the utility of adding expiration dates to organic certificates (or certifier-issued addenda). Since certification itself does not expire, an expiration date on a certificate would create confusion in the marketplace without protecting integrity. We recognize the intent of AMS is to ensure that certificates are updated frequently enough to be current and accurate, and we agree with these goals. But they can be achieved through other provisions of the rule, such as requiring an annual update to the OSP and an annual certificate that corresponds to that OSP update. The anniversary date already included on organic certificates and the compliance tools certifiers already have for when operations do not submit renewal forms by that date are adequate for certificates to be issued annually. Certifiers already get requests from certified operations and their buyers for updated certificates around the anniversary date because many businesses confuse the anniversary date with an expiration date. These requests create a paperwork burden for certifiers but do not enhance organic integrity, since updates to the anniversary date in response to these requests are typically issued without a substantive review of the OSP or another inspection. Adding expiration dates to certificates or addenda will simply increase that paperwork burden – another distraction from real verification and enforcement of integrity. **We request that AMS remove all reference to expiration dates from SOE, including at 205.404(c)(6).**

6 - Continuation of Certification

We support removing the directive for operations to provide an update on noncompliances with their annual OSP renewal, which serves little purpose. Noncompliances are followed up on by certifiers (and their inspectors) according to appropriate timelines regardless of where the operation is in the annual certification renewal cycle.

Conducting annual inspections once per calendar year is an appropriate goal under normal circumstances; however, codifying this requirement may have unintended consequences. Certifiers

were able to employ remote inspections and records audits in 2020 to continue to verify integrity at certified operations despite the COVID-19 pandemic because of a flexibility in the current regulations. Because certification does not expire, and compliance must be verified at on-site inspections "annually", certifiers could interpret "annually" to mean at least once per annual renewal cycle, delay an on-site inspection until it was safe to visit, and substitute virtual inspection in the meantime. Changing "annually" to "once per calendar year" would eliminate this flexibility. While we support frequent inspection to verify compliance, we feel that specifying a calendar year unnecessarily limits options. Focusing instead on inspecting at an appropriate time when compliance can be verified may ultimately serve integrity better. If AMS adheres to once per calendar year, it would be appropriate to add inspection timing to the list of acceptable reasons to propose a temporary variance.

Conducting annual inspections once per calendar year, rather than once per annual certification cycle, may be a challenge for OEFFA Certification and will require a longer implementation period than 1 year. Most of our inspections are conducted by contract inspectors who determine their own schedules and occasionally in our follow-up with those inspectors we discover that an operation was not inspected according to our requested timeline. More significantly, we currently conduct a thorough pre-inspection review process (which is perhaps unusual among certifiers) to address as many issues as possible prior to the inspection, prompt the operation to prepare certain items for the inspector, conduct risk assessment of the operation and prompt the inspector to address items related to identified risks. This process ensures that inspection goes as smoothly as possible because the operation and inspector are better prepared – furthering both efficiency and integrity verification. However, the seasonal nature of farm certification is such that if an operation does not send its renewal paperwork until late summer, we may not complete the pre-inspection review in time for their inspection to happen before January. If the operation was inspected in July of the previous year, they would go 18 months between annual inspections and we would not comply with the revised language at 205.406(b). This delay is not frequent, but it is not rare either. Such operations become higher priorities for unannounced inspections, but it is our reading of 205.406(b) that an unannounced inspection would not satisfy this requirement. We will therefore need to rethink significant portions of our process to comply with this section. **Despite these challenges, we are supportive of ensuring adequate frequency of inspections throughout the industry**.

7 - Paperwork Submissions to the Administrator

Please refer to our logistical and practical concerns above regarding Certificates of Organic Operation (section 5). Again, an IT solution from AMS for quick and easy upload is needed to allow certifiers to meet these requirements without unnecessary burden, the costs of which would be transferred to clients. If an IT solution is not offered, monthly update of INTEGRITY is the most reasonable "current" data that is not overly burdensome. The phrase "current and accurate data in INTEGRITY" is too vague

for us to fully predict the ramifications of this change. However, we are in broad support of INTEGRITY containing current and accurate data about certified (and formerly certified, denied and withdrawn) operations. Please also see our comment on section 12 regarding listing responsibly connected persons in OID. We propose revising 205.501(a)(15) to:

> Maintain current and accurate data in INTEGRITY for each operation which it certifies, operations whose certification has been surrendered, suspended or revoked, and all applicants who were denied certification or withdrew with adverse actions;

8 - Personnel Training and Qualifications

OEFFA and the OEFFA Grain Growers' Chapter agree it is essential that inspectors and reviewers have adequate knowledge and skills to evaluate compliance of certified operations and applicants for certification. The OEFFA Grain Growers' Chapter concurs with the focus on continuing education included in the proposed rule, which is both customary in multiple professional fields, and necessary for all of us to achieve the spirit of continuous improvement upon which the organic industry is founded. However, we have several concerns with the proposed provisions in this section, some logistical or practical and some more philosophical. Most importantly, we don't want to create a barrier to entry for new inspectors or certification reviewers, as this would make it more difficult for the industry as a whole to achieve the requirements of both current and proposed regulations. We fear certain proposed requirements are at odds with the goals of the Human Capital item on the NOSB work agenda.

First, it has been our observation that many different types of learning and experience can enable an inspector (or reviewer) to verify organic integrity at a farm or handling operation. Certainly, it is beneficial for the inspector to have experience working at an organic farm to evaluate management methods. But familiarity with conventional systems confers other benefits highly pertinent to integrity, such as recognizing the smell of conventional chemicals in the soil or the appearance of conventional seed treatment residue in a planter box or the wilting patterns of plants affected by dicamba. Understanding of, and familiarity with, these management systems and tools can be conferred not only by studying them in an educational institution or working in the field as an employee or owner, but also through farm tours, webinars and workshops, trainings from IOIA/ACA/NOP/OILC or certifiers, conference demonstrations and presentations, volunteering at a farm, shadowing another inspector, and even simple conversation with other inspectors or farmers. An experienced farmer working as an inspector, for example, may miss things when auditing that someone with an accounting background would flag for investigation. Stipulating that an inspector must have one year of field-based experience [205.501(a)(4)(i)(C)] with organic production is too limiting when considering the full range of experiences that may confer "required knowledge, skills and experience... to evaluate compliance with the applicable regulations".

Second, we are challenged to interpret the requirement that experience be relevant to the "scope and scale" of an operation. Does "scope" mean simply Crop/Wild Crop/Livestock/Handling? That would be consistent with language elsewhere in the regulations but does not seem aligned with the granularity of evaluation discussed in the preamble, which suggests that "scope" may mean something more detailed about the type of operation and activities conducted. Working at a poultry operation is not, by itself, adequate experience to evaluate pasture rule compliance at a dairy, nor vice versa – but both can be learned through means other than working in the field or earning a degree. Few inspectors have direct experience with commercial production of wild crops, but most crop inspectors can learn to identify good management. Granularity becomes even more challenging with the handling scope. Is an inspector's one year of experience making artisanal cheese adequate (per AMS's intent) to inspect the following operations: maple syrup producer, grain elevator, brewery, coffee roaster, produce distributor, spice importer, custom feed mixer? Does it make a difference if the inspector was the primary cheesemaker/formulator, a bookkeeper or salesperson for the cheese, or a worker responsible for cleaning equipment and monitoring temperature? The issue of "scale" is potentially even more challenging for both producer and handler inspectors. Does milking 25 cows for a year qualify someone to inspect a 300-cow dairy? Does working on a 15-acre vegetable farm qualify a person to inspect 200 acres of small grains and hay, or a commercial greenhouse selling potted plants, microgreens and sprouts? Does distributing food at a multi-farm CSA qualify someone to inspect a large distribution warehouse? And the converse: does running a 1500-acre grain farm qualify an inspector to inspect a small, diversified vegetable operation? Does managing herd health for a mega-dairy qualify someone to inspect a small-scale raw goat milk operation? **The requirement that inspectors have one year of field-based experience related to both scope and scale would be difficult to interpret and enforce.** Some current inspectors may not meet the requirement even if they have been successfully inspecting for many years (unless inspection itself can qualify as field-based experience, as it ought). The strictest and most careful interpretation of 205.501(a)(4)(i)(C) would likely leave the industry with far too few "qualified" inspectors, especially if only one year is offered for implementation. This requirement may also prevent existing inspectors from adding new scopes or scales of operations to their repertoire, as it does not appear to leave room for on-the-job training, mentoring/apprenticeship, or non-field-based learning.

Rather than require, in the regulation, that inspectors have one year of field-based experience relevant the scope and scale of each operation they will inspect, we recommend an approach similar to that used for risk assessment of certified operations: a list, described in guidance, of qualifying knowledge and skills, related to scope and scale, from which inspectors must have a majority as applicable to the type of operation they will inspect. Certifiers would prioritize topics for training based on any knowledge or skills gaps identified based on this list. For the regulation itself, it would be preferable to require at 205.501(a)(4)(i) that:

(C) Certifying agents must demonstrate that all persons who conduct inspections, including staff, volunteers, or contractors, have the relevant knowledge, skills, and experience required to perform inspections of operations assigned and to evaluate compliance with the applicable regulations of this part;

This revision would provide adequate teeth to the regulation for NOP to issue a noncompliance to a certifier who uses an inspector lacking the relevant knowledge, skills, and experience. It would also provide inspectors flexibility in how they acquire these traits and provide certifiers flexibility in how they evaluate inspector qualifications. The requirement at 205.501(a)(4)(iii) that certifiers maintain training requirements, procedures, and records for all inspectors and reviewers will allow AMS to evaluate these procedures for adequacy. NOP, ACA, and IOIA could also collaborate to form a rubric for what "qualified to evaluate" inspectors means.

OEFFA Certification conducts, and requires, annual trainings for our reviewers and inspectors. These trainings include both refreshers on basic knowledge and skills and updates on any new processes, policies, guidance, memos or regulations since the previous annual training. We support our review staff to attend conferences, farm tours, IOIA, ACA, OILC and other trainings to both deepen and broaden their knowledge relevant to certification work and already provide 20+ hours of trainings annually to review staff (and significantly more for new employees). We are in favor of ongoing training for all involved in organic certification; only with such trainings to keep pace with the evolution of the industry can we achieve continuous improvement in practices and enforcement. In fact, OEFFA and OEFFA Grain Growers' Chapter members agree **the NOP should ensure commensurate, if not higher, levels of experience and training for Regional Accreditation Managers at AMS and for those who hear and decide appeals.** Those who are in an evaluative role need to have a greater breadth and depth of understanding of the organic standards, so we support their development and training as well.

However, we have some concerns about the 20-hour requirement specifically. For one thing, unless the types of activities that qualify as training are broadened to include mentoring and shadow inspections, farm tours, and volunteer work (to name a few), it may be challenging for some inspectors who are independent contractors to pay for trainings, especially if they do not conduct many inspections and have lower income from inspection work. It is not reasonable to require certifiers to pay for the training of independent contractors. Documenting and tracking training for contractors may be challenging for certifiers and it is unclear what consequences would ensue if the 20-hour requirement were not met. And for both inspector and reviewer training (again, dependent somewhat on what counts as training), it will be challenging for some certifiers to meet this requirement, especially if a person who works as both inspector and reviewer is required to have 40 hours of annual training. **Certifiers such as OEFFA who use a flat fee structure may not have budgetary space for potentially hundreds of additional hours of training expenses and may also be challenged to maintain workload capacity while devoting additional time to training.** Of course, fees can be restructured, but ultimately this will result in extra

cost to certified operations. Requiring inspectors to have "relevant knowledge, skills and experience" and reviewers to demonstrate [at 205.501(a)(4)(ii)(B)] "... successful completion of ~~a minimum of 20 hours of~~ annual training in topics that are relevant to certification review" would promote ongoing learning and improved qualifications without handicapping independent inspectors or certifiers who try to maintain lower fees. **We are supportive of AMS requiring 20 hours of annual training for both inspectors and reviewers; however, additional flexibility is needed in the types of training considered relevant for this purpose.** Such training could include farm tours, field days, in-person, and online trainings offered both for a fee, and for free by organic and sustainable agriculture organizations, NOP, IOIA, Natural Resource Conservation Services, Soil and Water Conservation Districts, Extension services, ATTRA, Rodale, and others, with mutual consent of the certifier and the inspector.

9 - Oversight of Certification Activities

OEFFA currently has only one certification office and we do not anticipate this section applying to us. However, the current wording encompasses any certification activities conducted in any location, which implies that we would need to contact AMS within 90 days of allowing a staff member to work remotely from a home office. That does not seem to be the intent of the rule, nor does it seem reasonable. To specify that individual remote employees do not constitute a separate "certification office," 205.2 could be revised as follows:

> Certification office. Any site or facility where certification activities are conducted, except for certification activities that occur at certified operations or applicants for certification, such as inspections and sampling, or by individual staff of a certification office working remotely.

Similarly, we suggest adding the word "satellite" to 205.501(a)(22) to clarify what type of office counts as a certification office for purposes of this rule:

> Notify AMS not later than 90 calendar days after certification activities begin in a new satellite certification office...

The removal of clauses limiting fee assessment and collection to "applicants for initial accreditation and accredited certifying agents submitting annual reports or seeking renewal of accreditation" at 205.640 implies that AMS could collect fees from certifiers at any time (not limited to annual reports and accreditation renewal). This would be a significant change, but it is unclear from both the rule itself and the preamble whether that is the intent of AMS. Please provide additional clarification and discussion of what other types and timings of fees AMS is considering.

10 - Accepting Foreign Conformity Assessment Systems

It is our reading of this section and preamble that recognition agreements will not continue and will be supplanted by direct accreditation and the process outlined in 205.511 - is that correct? There are certainly risks to other countries' governments overseeing the implementation of NOP certification; any time that multiple actors have oversight of activities there is opportunity for inconsistent enforcement. To support consistency and accountability in accreditation, both of foreign country government programs overseeing the implementation of certification, and of the USDA National Organic Program's administration, we urge the implementation of a robust, public, transparent peer review process. We are pleased that procedures to accept foreign conformity assessment systems are being developed and codified; we expect these regulations to result in much greater consistency across foreign and domestic certification to NOP standards.

11 - Compliance – General

The revision at 205.660(c) is a very thorough clarification of who is encompassed by NOP's oversight – thank you for making this change, which should greatly strengthen organic enforcement. Our only concern with this section regards the wording at new 205.660(e) - the wording was not proposed to change, but it should. The requirement to use a delivery service that provides dated return receipts is outmoded for paper correspondence and inapplicable to electronic correspondence (which is preferred by many operations). Therefore, we suggest replacing "~~dated return receipts~~" with "documented delivery confirmation," which would allow for any tracked mail (such as Priority mail) or registered/tracked email, not just Certified mail. These alternative means are already used by certifiers to communicate with clients and provide the same traceability and accountability while improving flexibility. Changing the wording would simply better match current practice.

12 - Noncompliance Procedure for Certified Operations

We support the replacement at 205.100(c) of "operation" with "person or responsibly connected person," which is better aligned with OFPA. But we would like to note the challenge of listing responsibly connected persons. OEFFA has repeatedly revised our OSP forms over the years to better elicit complete and accurate responses from operations about who is connected to the operation and in what manner. These portions of the OSP are often not thoroughly filled out, which we only come to realize in the event of a problem (the death of an operator, for example). The OEFFA Grain Growers' Chapter indicates it is not difficult to identify which family members or partners are responsibly connected and which are merely involved with the operation and/or authorized to discuss the OSP. They expect it would be more difficult to determine who is responsibly connected in a bigger operation. It is the experience of OEFFA Certification reviewers that sorting out who should be listed on the OSP and on

the certificate can take multiple phone calls even with a small operation. Turnover at farms and handling operations can also make it difficult to identify the full list of responsibly connected parties additional to the owner(s). Even after these parties are identified, it may not be clear who should actually be listed on the certificate.

OID does not provide much space to list all responsibly connected persons. The effect is that an OID search will rarely reveal that an applicant for certification has been previously certified or applied for certification – but the lack of search results gives a false sense of security, since not all persons are listed in OID and there is no room in the search design for spelling variations (e.g. "Jon Doe" vs. "Jonathan Doe" or "Jon C. Doe"). If a revoked, denied or suspended business was an LLC without all its responsibly connected persons identified by name in OID, it is impossible to determine if, when they reapplied under their own names or a different business name that they were connected to a revoked, denied, or suspended operation. Historical data also presents a challenge. Those responsibly connected in the past may no longer be. Can these people be held responsible for (and certification of new operations with which they are connected affected by) actions of operations with which they are no longer connected? What if those noncompliant activities occurred on their watch?

Changing the wording at 205.100(c) cannot by itself solve this problem, but additional data reporting guidance from NOP, additional data fields in OID, and improved search functionality of OID might. Of course, more data entry and reporting will add administrative burden for both operations and certifiers – but depending on how it is executed it may be well worthwhile to use these tools to improve enforcement.

Without the provision of an API to help automate data transfer, we are concerned that the requirement at [205.662(e)(3)] to update INTEGRITY within 3 business days may be beyond the administrative capacity of some certifiers and would suggest an increase to 10 business days.

13 - MEDIATION

Thank you for laying out the mediation process in greater detail. It may be helpful to include definitions of formal and informal mediation, if not in the rule, at least in guidance. To better align the proposed text with the preamble's allowance for informal mediation, including providing a settlement agreement along with informal mediation in lieu of a formal mediation session, "~~a mediation session~~" in 205.663(e) should be replaced with just "mediation".

14 - Adverse Action Appeals Process – General

We support the proposed changes to this section and the following section, which clarify existing processes through more precise language. We would like to **suggest replacing "dated return receipts" with "documented delivery confirmation" in 205.680(f), and elsewhere that "dated return receipts" are mentioned in the regulation [205.660(e)].** This would better describe existing and reasonable practices of using priority mail and registered email as well as certified mail. These alternatives have an equal or better degree of traceability and can be used to facilitate faster communication, which furthers both organic integrity and better customer service.

Another, and perhaps more consequential, means to further integrity and customer service alike is to speed up the appeals process. Even before an operation appeals an adverse action, it may be multiple years from first identification of a noncompliance to finding resolution, what with correspondence, inspector verification, perhaps subsequent correspondence or proposed adverse action, response time to that and a settlement agreement, then another inspector verification, and then more correspondence. With no recall authority, the certifier may wait months or years before they can finalize a suspension or revocation, during which time the operation remains certified and continues to market products which may not properly be organic as organic, which can cause further integrity issues down the supply chain. When the operation appeals, it is common for many months to elapse before NOP comes to a decision, which further prolongs the time that the operation is out of compliance. Therefore, **we respectfully request that NOP place a deadline upon itself to complete the appeals process in a timely manner, perhaps 60 or 90 days,** which would be in line with certifier deadlines proposed in the rule. Such deadline could be added to 205.680(g) as follows:

> All appeals must be reviewed, heard, and decided within 90 days by qualified persons not involved with the adverse action being appealed.

15 - Adverse Action Appeals Process – Appeals

As stated in the previous section, we support the proposed revisions.

16 - Grower Group Operations

OEFFA Certification does not currently certify any grower groups. We are generally supportive of comments made by the ACA and NOC regarding this section. We would add specifically that although the applicability of the grower group text to crops and wild crops only may have a detrimental effect on existing certified apiculture operations, we strongly believe that apiculture-specific standards are needed and that an exception for the grower group scope should not be made for a type of production that is inadequately addressed by existing livestock standards.

17 - Calculating the Percentage of Organically Produced Ingredients

Due to changes in net weight between formulation and a finished product (from cooking, baking, drying, brewing etc.) **we support the change at 205.302(a)(1)** from dividing by total weight of the finished product to dividing by total weight of all ingredients. However, the proposed language leaves room for differing interpretations: does "all ingredients (excluding water and salt)" mean excluding water and salt added as ingredients at formulation, or does it mean excluding all content of water and salt in the ingredients? That is, suppose an ingredient in organic soup is vegetable broth. Do you exclude water and salt from the broth when calculating the organic content of the finished product, or do you count the broth as a single ingredient with whatever its appropriate percentage is? **We believe that only water and salt added as ingredients at formulation should be excluded from the calculation.** This is most practical for operations and certifiers to verify, as many specification sheets for ingredients do not separate percentages of water and salt from other ingredients. And we believe it is also most aligned with the intent of this rule. So, we propose revising the language at 205.302(a)(1) as follows:

> Dividing the total net weight (excluding water and salt) of combined organic ingredients at formulation by the total weight of all ingredients (excluding water and salt added as ingredients).

18 - Supply Chain Traceability and Organic Fraud Prevention

Thank you for adding a definition of organic fraud; it is important for certifiers to have a consistent interpretation of what constitutes "fraud" as opposed to misleading, confusing, or accidentally inaccurate market claims. **We support the phrase "intentional deception" which mirrors the "willful and knowing" violation of standards that can result in revocation rather than suspension**. However, we find "illicit economic gain" (at 205.2) to be problematic, as "illicit" is not defined and there may be instances of fraud that do not involve "illicit economic" gain – that are perhaps related to reputation or branding but do not result in an unearned price premium for the product(s) in question. **We therefore suggest replacing "~~illicit economic~~" with "financial and personal" gain**, which would more fully encompass the range of fraudulent activities that can occur. As the OEFFA Grain Growers' Chapter so succinctly put it, "it doesn't matter if they are successful in achieving economic gain or not, wrong is wrong." This rephrasing would allow intentional deception through misleading marketing to count as fraud (as it should); it would not include instances where marketing is misleading but there is no intent to deceive.

The present wording for 205.103(b)(2) is somewhat problematic, in that it does not distinguish between internal records and records for external use (e.g. inventory vs. sales). While it is essential that external-facing records (such as invoices, sales slips, shipping manifests and other transaction and transportation records) identify products in plain language as "organic"/"100% organic"/"made with organic..." for

traceability and supplier verifications, these phrasings are overly restrictive when it comes to internal records. As is acknowledged in the preamble, internal records may use abbreviations such as "OG"/ "100% OG"/ "MWO" next to a product name, code or SKU, which provide adequate clarity and identification of products. Since it is important for both internal and external-facing records to identify products with their organic labeling category, we do not suggest revising the language proposed for 205.103(b)(2) but rather clarifying with guidance that the specific phrasing of these identifications may differ depending on whether records are internal only or external-facing.

While the ACA has a very helpful *Best Practices for Cross Agency Investigations*, this document is not binding and certifiers do not always share information promptly or completely enough to address suspected fraud. **We greatly appreciate the codification in the rule that certifiers must cooperate with each other to investigate, assess, and prevent fraud.**

Additional guidance on risk-based supply chain audits is needed to resolve questions such as: What is the "source" of a product – the last certified operation before sale to the final consumer, the processor that formulated the retail product, the processor(s) of each ingredient in the formulation, the farm where animals were raised for animal-based ingredients, the farm that grew the animals' fodder, the seed supplier, the farm(s) that grew the seed for the supplier? There's a bit of a chicken-and-egg problem when we start looking at seed sourcing. Ignoring that question leaves the larger one: how far back to go? This question applies both to the certifier conducting a supply chain audit and to the operation required to identify enough information about its supply chain to detect and prevent fraud. **If the audit must go several steps backward, it is questionable whether certifiers have the capacity to conduct that full audit and analysis or have the adequate purview to acquire pertinent information.**

Certified operations are responsible for traceability back to the last certified operation for each supplied product, but not those several steps backward beyond the previous certified operation. This is reasonable, feasible, and is already required by certifiers. That information, from certified operation to previous certified operation, can and should be audited by the certifier and assessed for integrity risks. But the preamble also seems to indicate that the certifier ought to go several steps further back when conducting supply chain audits, and we do not see how that will be a reasonable expectation of the certifier. If all certifiers have the same criteria for risk assessment and independently audit entire supply chains, this work will be duplicative; if work is not to be duplicated, which certifier is responsible for it? **It would make far more sense for the NOP, in its enforcement capacity and given its broader oversight of the supply chain (which encompasses all certifiers and certified operations), to conduct full supply chain audits and request information about specific certified operations from the operations themselves, or from their certifiers** (although the latter route is less efficient and cost-effective). Certifiers could collaborate with NOP in this regard, flagging operations as high-risk, conducting audits of those risky operations back to the last certified entities, and providing audit results to NOP. NOP could then collate results of certifiers' audits and use its greater purview to analyze the supply chain as a

whole. **If fraud were suspected based on this higher-level analysis, NOP could inform relevant certifiers, who would then investigate those specific instances/operations.** Given the importance of supply chain audits, it would be sensible for NOP to have dedicated staff with experience and skill to fully focus on audits; such staff would be far more effective than individual certifiers. **This type of partnership would accomplish the same aim as intended by the rule but more effectively and efficiently and without exceeding the administrative capacity and enforcement purview of individual certifiers.**

19 - Technical Corrections

Thank you for making these corrections.

20 - Additional Amendments Considered but Not Included in this Proposed Rule

Regarding the **questions posed by AMS on private-label packaged products**: Both the private-label brand owner and the copacker/contract manufacturer should be certified to eliminate gaps in supply chain traceability. Therefore, the brand owner/private label company will be the last certified operation in the portion of the supply chain over which they have control and should be listed on the packaging along with their certifier. The certifying agent should match the operation listed on the label; other variations, as currently allowed, introduce unnecessary confusion to the marketplace. While listing contract manufacturers/copackers on labels would greatly improve traceability, it should not be mandatory. For one thing, this information is considered proprietary in many private label arrangements, so the copacker listing would need to be indirect (such as the NOP ID we propose above). For another, some brand owners use dozens of contract manufacturers or copackers for the same product and it would be a logistical challenge to have dozens of versions of the same label, each with a different operation and certifier listed. Language used in the rule and in guidance should match, as nearly as possible, the prevalent terminology used in the industry.

Regarding the **questions posed by AMS on expiration of certification**: We might look to our European counterparts to see how expiration affects certification. OEFFA does not have direct experience with EU organic standards, but it is our understanding that expiration of certification functions mostly as a less communicative alternative to surrender or noncompliance (and eventual suspension) for nonrenewal. While the idea of less effort spent tracking down recalcitrant clients is an attractive one, we believe some sort of grace period, perhaps 30 or 60 days, would be necessary to allow for the inevitable special circumstances that arise and reasonably prevent operations from submitting paperwork on time (barn fire, surgery, death in the family, etc.). Customer service would oblige us to contact operations about their impending expiration of certification and to contact them about the grace period once the expiration date has passed. These communications would likely take the same amount of effort as our

current nonrenewal noncompliance process. We are also unsure what the market effects would be for any inventory on hand at the time of expiration and generally concerned about confusion that may result from certification expiring and beginning again if the operation reapplies.

Expiration may have the benefit of incentivizing prompt renewal OSP submissions if operations understood that once a certain date has passed, they have no additional options to renew their certification. The primary benefit to integrity that we see would be an administrative one: by simplifying the process by which operations stop being certified (for reasons other than noncompliance), the certifier can refocus efforts on risk assessment and compliance. However, there may be an integrity cost insofar as an expired operation would likely not have a final letter from the certifier detailing unresolved compliance issues (such as we issue for surrenders), which would make it more difficult for a subsequent certifier to ensure all issues are adequately addressed. If certifiers were required to issue such a letter, the process would be really the same as surrender but with extra calculations about expiry dates. We believe that reapplying for certification after expiration should have the same requirements as those of a new applicant for certification, since the operation will have had a gap in their certified management, but requirements should not be as stringent as those for reinstatement. (Would expiration be considered adverse action? How exactly would it fit into the compliance, adverse action, and appeals framework?) We support the proposed requirements for renewal of certification (everything currently required, minus updates on noncompliances). Regarding adverse actions, our answer hinges on whether the issues are “unresolved” or “unaddressed.” Certification currently can be renewed for operations that have adverse actions that are not yet resolved and are pending verification by an inspector or reviewer, such as terms of a Settlement Agreement. We do not believe certification should be renewed for an operation that has not adequately addressed notices of adverse action (and we do not currently practice renewal for such operations).

ECONOMIC ANALYSES

We discuss administrative and certification costs elsewhere in our comments; we believe AMS may have underestimated both of these cost categories. We also see another major category of cost that is not mentioned in the economic analysis: human capital. In addition to questions raised above regarding section 8 (Personnel Training and Qualification), we anticipate significant cost to certifiers and private inspectors: to gain experience needed to meet the qualifications needed to inspect operations (depending, of course, on how “scope and scale” is interpreted); to meet the ongoing training requirement (direct training expense plus opportunity cost for inspectors who are training and not doing their primary paid work); to certifiers who must offer competitive compensation that allows them to hire or contract and retain qualified inspectors and reviewers; and to hire additional staff qualified to work with new types of certified operations and conduct larger supply chain audits.

Despite what we believe to be a major underestimation of cost, let us be clear that we support the majority of what is in this proposed rule and hope to work with the NOP on cost control measures.

IMPLEMENTATION TIMELINE

OEFFA appreciates the time dedicated to this subject by AMS and we are excited to see improvements throughout the organic industry that result from tightening of loopholes, improved consistency of interpretation and enforcement, and clarification of procedure contained within the SOE rule. We are concerned that certain portions of the rule will need a longer implementation timeline than one year and that certain implementation costs have been significantly underestimated; in particular, timelines and costs related to generating certificates in OID, certification for all operations that are no longer exempt or excluded, building "human capital" in inspection and certification, and full supply chain traceability/fraud prevention.

To generate certificates in OID, certifiers will need to make changes to their internal databases to record additional information, or to record information differently, compared to what they do currently. They will need time to plan and implement those changes, and they will need time to get data for all certified operations updated with those changes, before they can fully comply with the reporting that will be necessary. It is unreasonable to expect manual data entry into OID, which essentially duplicates data entry certifiers must do in their own systems as well. This is inefficient and creates the potential for errors. USDA should work with certifiers to create an API to facilitate data uploads to OID. Certifiers will also need time to revise their own certificates to include only information that is not printed on the OID-generated certificate (such as private label addenda and international equivalency information). Additionally, depending on what specific "other data" needs to be reported to OID, it may take over a year for certifiers to implement – particularly if additional information needs to be collected from certified operations and built into the certifier's internal database before it can be reported.

We are concerned that AMS has vastly underestimated the number of uncertified entities that will need to become certified under the new rule; during an ACA discussion, one certifier mentioned that they track over 1000 uncertified entities in the supply chains of the operations they certify alone. We do not know exactly how many uncertified entities will need to become certified (which is part of why SOE is so necessary), but we can be sure that it will take time, effort, and human capital to comply. Uncertified entities will need technical assistance in becoming certified for the first time. Inspectors will need additional training, or additional inspectors will be needed who are experienced in complex supply chain audits of brokers, importers, exporters, distributors and warehouses. Certifiers will need to hire and train additional review staff to accommodate the increased number of applications for certification. **One year is enough time for certifiers to change their policies, compliance processes and SOPs, but it is not**

enough to adequately bolster numbers of experienced staff to handle the volume of new handlers, especially when certifiers will be competing for the same qualified inspectors and reviewers. Along these same lines, we are glad to see that NOP has started an industry-wide conversation around human capital and look forward to collaborating with the organic community to improve all our access to experienced staff.

We are pleased that NOSB will be discussing human capital strategies at their upcoming meeting and we encourage AMS to refer to that discussion, and public comments submitted for it, when considering the human capital ramifications of SOE. For now, we will simply say briefly that the organic industry is already struggling to hire and retain qualified inspectors and reviewers, and that the added requirements of SOE – important though they are – will make it more difficult. Not only are there costs involved (see comments above) but also it will take time for the sector to expand its knowledge/experience/training base to meet the requirements of SOE. We are concerned that a year may not be nearly enough time for existing inspectors to gain all the qualifications required by the rule at a rate that allows them to inspect currently certified operations (never mind additional operations previously exempt or excluded). While over the long term the ongoing training requirements will raise the bar for the sector as a whole, we are likely to see incomplete compliance with the qualification stipulations in the first couple years. Even if AMS incorporates our suggested revisions to section 8, we expect to need at least two years to both locate and train additional inspectors as well as provide additional training to current inspectors.

Finally, it is perhaps obvious that the full supply chain audits and fraud prevention procedures cannot be entirely implemented until all previously exempt/excluded operations have come into compliance by becoming certified. Therefore, the provisions in section 18 of the proposed rule will need to have the same implementation timeline as the timeline for certification of previously uncertified entities.

For the reasons above, we suggest a two-year implementation timeline for these provisions of SOE. A one-year timeline seems feasible for the other provisions.

ADDITIONAL TOPICS

OTHER QUESTIONS POSED BY AMS (NOT ALREADY ADDRESSED)

Educational initiatives and policy described in guidance could achieve many of the same objectives as the proposed regulations. Additional courses in auditing, risk assessment, complex supply chain and import/export verifications are either currently under development, from what we understand, or could be made available in the OILC, as well as any topics identified as knowledge gaps among inspectors or reviewers. Certifiers already have incentives to use qualified personnel and continue their education: it is good customer service (operations hate clueless inspectors), it keeps staff happy and engaged through

professional development, and certifiers already must provide evidence of expertise and ability to maintain accreditation. Inconsistencies in inspection timeframes, organic certificate formats, data uploaded to INTEGRITY, risk assessment and auditing procedures can all be addressed through guidance. Moreover, NOP could partner with ACA, IOIA, IFOAM, or other appropriate groups to develop guidance and educational materials. However, guidance and education cannot close gaps in the supply chain where uncertified entities handle organic products, clarify NOP assessment of foreign bodies, require better import verification, or revise labeling procedures for nonretail containers; all these must be addressed with regulation.

To cover the costs of this proposed rule, certifying agents will need to charge fees to certified operations. They may bill for individual services in some cases (such as issuing export certificates), but many costs will be passed on by raising certification fees on the whole. Costs associated with personnel qualifications and ongoing training, conducting supply chain audits, database or reporting changes and other administrative costs will likely be distributed among all certified operations. Certifiers currently differ in practices for assessing fees related to unannounced inspections; some bill the inspected operation directly and others consider it a general cost of doing business (so it is distributed among all certified operations). It would be good if certifiers consult each other when choosing fees to use for brokers and traders; it does not seem appropriate for NOP to dictate what fees certifiers assess. We do not anticipate that income from certification fees for newly-certified operations will cover all the new costs associated with this rule and expect rather that the cost of certification will be raised in general.

Organic Imports Interagency Working Group

The Organic Imports Interagency Working Group should continue to convene into the future. Possible items for the working group to address include:

- Examining areas where the NOP may require additional authority including the possibility of advancing trademark protection for the organic seal. Per previous conversations with the NOP, such trademark protection would give the program additional authority over uncertified entities that engage in fraudulent activity including those operations that have already surrendered certification. The workgroup can also assess whether additional legislative authority is needed to help the program sufficiently identify fraudulent imports. An example is requiring incoming shipments to send bills of lading to Customs and Border Protection that provide detailed information on what is contained in the shipment including alerting CBP to incoming organic grain.
- Another area for advancement is acquiring more complete information on organic imports. This includes getting additional harmonized tariff codes for organic products from the International

Trade Commission. Ensuring more organic products have harmonized tariff codes will aid in tracing products using the Global Agricultural Trade System.

- The working group could also look into the practices of insuring commodities entering into the United States. Are shipments of grain insured during transport and can investigators determine if they are insured as conventional or organic as a means of identifying fraudulent products?

Regulatory Choices

While we support the aims of this proposed rule and look forward to its furtherance of organic integrity, we cannot help but note that the proposed rules stemming from consumer awareness of the organic sector are not the rules moving forward. The Origin of Livestock and Organic Livestock and Poultry Practices proposed rules had broad support from both the organic industry and the wider community of consumers interested in organic practices, but these rules have not been implemented. We have some concern that Strengthening Organic Enforcement, with its sweeping changes to the organic industry and significant regulatory and administrative costs, may not elicit the same enthusiasm and willingness of consumers to pay higher premiums for organic products as these other proposed rules. We must move forward on all three fronts to move the organic industry forward.

On behalf of the Ohio Ecological Food and Farm Association and OEFFA Certification,

Amalie Lipstreu
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