



# Strengthening Organic Enforcement



National Organic Program - Informational Report

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The Organic Foods Production Act of 1990<sup>1</sup> authorizes the Agricultural Marketing Service (AMS) to establish and maintain national standards governing the marketing of organically produced agricultural products. AMS administers these standards through the National Organic Program (NOP). The mission of the NOP is to protect the integrity of the United States Department of Agriculture's (USDA) organic products and the organic seal. According to AMS, the enforcement of the standards governing organic products "is a vital part of the global organic control system."

NOP accredits and oversees 75 third-party organizations to certify that farms and businesses meet the national organic standards.<sup>2</sup> Certifiers verify and document the claims of more than 45,000 organic farms and businesses around the world.<sup>3</sup> Together, NOP and third-party organic certifiers are charged with protecting consumers by protecting the integrity of the USDA organic seal. This partnership is intended to create a level playing field and a fair marketplace for farmers, ranchers, and food handlers. NOP's goal is to ensure all organic businesses comply with the rules and to remove the organic certification of those that will not or cannot comply.

This report provides information detailing the control activities implemented to strengthen enforcement of the USDA organic regulations and explains how AMS intends to measure the effectiveness of the new organic regulations.

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<sup>1</sup> The Organic Foods Production Act of 1990, as amended through Pub. L. 109-97 (2005).

<sup>2</sup> As of July 27, 2023.

<sup>3</sup> As of July 27, 2023.

Enacted into law on December 20, 2018, the Agricultural Improvement Act of 2018<sup>4</sup> (Farm Bill) directed USDA to implement several program changes to strengthen the organic regulations.

Figure 1: Changes to AMS' Role from the 2018 Farm Bill



<sup>4</sup> Agriculture Improvement Act of 2018, Pub. L. 115-334 (2018).

AMS has taken several measures to strengthen its organic program oversight. Many of these were called for in the Farm Bill. For example:



**Deepening Global Organic Control Systems** – In 2015, AMS released the Organic Integrity Database (OID), a modernized system that contains current and accurate information about operations that may or may not sell organic products. In addition, the system was designed to deter fraud, increase supply chain transparency for buyers and sellers, and promote market visibility for organic operations. According to AMS, OID improves the access to certified organic operation information by giving industry and public users an easier way to search for data with greater precision.



**Risk-Based Oversight and Enforcement** – NOP reports applying risk-based analysis to focus enforcement resources where they have the most significant impact in protecting organic farmers, businesses, and consumers from fraud. Through the use of NOP's risk-based analysis, NOP plans to prioritize complex investigations with a high market impact by tiering complaints as they are received and processed. For example:

1. Intake analysts now handle simple inquiries, providing customers with answers faster and focusing analyst time on more complex investigations.
2. A team trained to reduce case processing times and to compel faster compliance handles complaints about uncertified businesses selling products as organic.
3. Complex cases are assigned to more specialized, experienced NOP investigators, allowing the team to more quickly initiate investigations.

AMS is required to annually report the results of its enforcement actions to Congress.<sup>5</sup>



**Organic Trade Enforcement Interagency Coordination** – As required by the 2018 Farm Bill, USDA established the “Organic Agricultural Product Imports Interagency Working Group” with the U.S. Customs and Border Protection (CBP) to coordinate and share information related to organic imports and supply chain integrity. The working group held its first meeting in June 2019; its major priorities and initiatives include the following:



- **Organic Import Certificate:** In April 2020, CBP and NOP deployed the electronic organic import certificate in the CBP's Automated Commercial Environment (ACE), the Government's primary import tracking system. According to AMS, when fully implemented in March 2024, the system will provide critical import data to support oversight and investigations. The organic import certificate technology is now available for use by the trade community.

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<sup>5</sup> USDA – AMS, *Organic Enforcement Activity* (June 5, 2023). See <https://www.ams.usda.gov/services/enforcement/organic-enforcement-activity#Annual> for AMS' most recent report to Congress.



- **Commercial Targeting and Analysis Center (CTAC)**<sup>6</sup>: In July 2020, NOP committed a staff member to work as part of the interagency CTAC based at CBP. According to AMS, its staff commitment to CTAC has increased its ability to collaborate with CBP and increased its access to trade and import data, which enhanced its ability to identify and track potentially fraudulent organic shipments.



**Intellectual Property Protection** – In June 2022, AMS registered its trademark of the USDA organic seal with the CBP National Intellectual Property Rights Coordination Center. According to AMS, this allows CBP the authority to enforce its trademark at the border. AMS states that trademarking the USDA organic seal allows CBP the authority to detain, reject, and potentially re-export products that fraudulently use the USDA organic seal.

## Strengthening Organic Enforcement

In addition to the actions described above, AMS published a proposed rule in August 2020 titled “Strengthening Organic Enforcement” for oversight and enforcement of the organic agricultural products’ production, handling, and sale. AMS received over 1,500 public comments from various stakeholders, including certifying agents, certified organic producers and handlers, uncertified handlers, retailers, organic inspectors, trade associations, organic advocates, scientific organizations, government organizations, and consumers. Many of the public comments supported the proposed amendments and agreed that the rule is needed to improve oversight and enforcement, drive consistent implementation of the organic regulations, and reduce organic fraud.

On January 19, 2023, USDA published its Strengthening Organic Enforcement (SOE) rule as final.<sup>7</sup> The SOE rule is intended to strengthen enforcement of the USDA organic regulations through the following actions mandated by provisions in the 2018 Farm Bill:



**Reducing** the types of uncertified entities in the organic supply chain that operate without USDA oversight—including importers, brokers, and traders of organic products. According to AMS, reducing the types of uncertified entities in the supply chain will safeguard organic integrity and improve traceability.



**Requiring** the use of electronic import certificates for all organic products entering the United States. According to AMS, this change expands the use of NOP import certificates to all organic products imported into the United States, improving the oversight and traceability of imported organic products.

<sup>6</sup> CTAC is an operational extension of One-U.S. Government at the Border that works to prevent, deter, and investigate violations of U.S. import and export laws by facilitating information and resource sharing among participating Government agencies.

<sup>7</sup> *National Organic Program Strengthening Organic Enforcement*, 88 Fed. Reg. 3548 (Jan. 19, 2023).

In addition to the Farm Bill provisions, the SOE rule implements best practices and recommendations from the National Organic Standards Board that work in alignment with Farm Bill provisions to further strengthen organic enforcement and prevent fraud.



**Strengthening** recordkeeping and supply chain traceability by:

- Requiring certified operations to develop and implement improved recordkeeping and organic fraud prevention procedures, conduct supply chain traceability audits, and develop information sharing.
- Requiring that nonretail containers used to ship or store organic products are labeled with organic identity<sup>8</sup> and are traceable to auditable records.
- Clarifying how certified operations may submit changes to their organic system plan, reducing paperwork burden for operations and certifying agents.
- Clarifying how to calculate the percentage of organic ingredients in multi-ingredient products, promoting consistent interpretation and application of the regulations.



**Clarifying** AMS' authority to oversee and enforce organic trade by:

- Requiring certifying agents to issue standardized operations certificates generated from OID, simplifying the verification of valid certificates of organic operation.
- Establishing specific qualifications and training requirements for certifying agent personnel, including inspectors and certification reviewers.
- Requiring certifying agents to conduct unannounced inspections of at least 5 percent of the operations they certify, complete mass-balance<sup>9</sup> audits during annual on-site inspections, and verify traceability back to the previous certified operation in the supply chain during inspection.



**Strengthening** oversight of the accredited certifying agents by:

- Establishing certification requirements for producer group operations (grower groups) that provide consistent, enforceable standards and ensure compliance with the organic regulations.
- Clarifying conditions and requirements for equivalence determinations with foreign government organic programs.
- Clarifying that NOP may initiate enforcement action against uncertified operations.
- Clarifying the NOP appeals process and using mediation as alternate dispute resolution.

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<sup>8</sup> Nonretail containers used to ship or store certified organic agricultural products must display: 1) identification of the product as organic; and 2) the production lot number, shipping identification, or other unique information that links the container to audit trail documentation.




<sup>9</sup> *Mass-balance* covers quantities of agricultural products, so a certifying agent can review one or more of the ingredients in a product during inspections.

AMS expects the SOE rule will improve organic integrity across the organic supply chain and benefit stakeholders throughout the organic industry. NOP intends that these amendments will close the gaps in the current regulations to build consistent certification practices to deter and detect organic fraud and improve transparency and product traceability. In addition, AMS expects the amendments will assure consumers that organic products meet a robust, consistent standard and reinforce the value of the organic label. Lastly, according to AMS, accredited certifying agents, organic inspectors, producers, processors, brokers, traders, exporters, and importers who are not certified organic have until March 2024, to implement the requirements of the SOE within their operations.



To assess the effectiveness of the SOE rule during the implementation phase,<sup>10</sup> AMS developed an initial list of performance measures<sup>11</sup> and targets based on key elements identified in the SOE rule. However, these performance measures and targets are preliminary and subject to change as better information becomes available. Figure 2 illustrates two examples of the preliminary performance measures AMS is considering to measure the effectiveness of the controls AMS established pertaining to SOE.

Figure 2: Strengthening Organic Enforcement Rule Performance Measures  
Draft and Pre-decisional

Strengthening Organic Enforcement Final Rule Performance Measures			
			
	Key Rule Element	Measure	Target
Exemptions from Certification	More operations will need to be certified across organic supply chains, as the rule eliminates many current exemptions to certification.	The Agricultural Marketing Service (AMS) will count the number of certified handlers in the Organic Integrity Database (OID).	Based on the estimates in the Strengthening Organic Enforcement (SOE) rule, AMS estimates a 20 percent increase in number of certified handlers by 1 year after implementation of the new rule and a 5 percent increase per year thereafter.
Import Certificates	All organic products imported to the United States are required to be associated with an import certificate issued by an authorized certifier overseeing the exporter.	AMS will count the number of import certificates in the OID.	All certifiers overseeing operations exporting to the United States that issue import certificates and have issued at least 1 import certificate at the time of SOE rule implementation will be reviewed. Due to the unknown volume of imports, the target amount to assess will evolve once the rule has been implemented.

<sup>10</sup> The SOE implementation phase ends March 19, 2024.

<sup>11</sup> A *performance measure* is a means of evaluating efficiency, effectiveness, and results. Agencies use a particular value or characteristic to measure progress toward goals and find ways to improve progress, reduce risks, or improve cost-effectiveness.

## Objective, Scope, and Methodology

The objectives of our inspection were to identify the actions taken in response to the 2018 Farm Bill provisions to further strengthen enforcement of the USDA organic regulations. Additionally, we obtained information on how AMS will measure the effectiveness of the new organic regulations. We performed our fieldwork virtually from March 2023 through July 2023.

To accomplish our objective, we identified and gained an understanding of the NOP SOE final rule through publicly available information, discussions with AMS officials, and a review of documentation provided by AMS. This informational report does not contain any conclusions, findings, or recommendations. We provided a draft of this product to AMS management for their review and technical comments. We have incorporated their comments into our report, as appropriate.

We conducted this inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.<sup>12</sup>

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<sup>12</sup> Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation* (Dec. 2020).



## Abbreviations

ACE.....	Automated Commercial Environment
AMS.....	Agricultural Marketing Service
CBP.....	U.S. Customs and Border Protection
CTAC.....	Commercial Targeting and Analysis Center
FY .....	fiscal year
NOP.....	National Organic Program
OFPA .....	Organic Foods Production Act of 1990
OID .....	Organic Integrity Database
SOE .....	Strengthening Organic Enforcement
USDA.....	United States Department of Agriculture

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