

January 22, 2023
National Organic Program
USDA-AMS-NOP
Room 2646-So., Ag Stop 0268 1400
Independence Ave. SW Washington, DC 20250-0268

Re: Notice of Intent to Extend and Revise a Previously Approved Information Collection (2024)
Document ID: AMS-NOP-23-0052-0001

Submitted electronically

Dear Deputy Administrator Tucker,

The Organic Farmers Association (OFA) is a membership organization that represents America's certified organic farmers. Our organization was founded by and is controlled by certified organic farmers, and only domestic certified organic farmers vote on OFA's policies and leadership. We appreciate the opportunity to provide input on the burdens, cost and other effects of the information collection required by the USDA organic regulations.

Risk-Based Policies are Needed

Organic is a growing sector of the U.S. agriculture system, with tremendous potential to address climate change, help family farms flourish, revive rural communities and protect public health. The potential for economic viability for smaller farms has been a major strength of the organic sector, and is an important component of creating a domestic food supply that is resilient. However, transitioning to and maintaining organic certification represents a significant investment of money and time spent on recordkeeping. The recordkeeping required can be burdensome for small farmers, and in some cases, deters small farms from transitioning to organic, including those already incorporating organic practices.

OFA farmers are interested in policy changes that would ease the burden of record-keeping on small, low-risk operations such as small farms with a history of compliance and a simple supply chain while still ensuring adequate oversight and fraud prevention measures are in place for higher-risk operations with long and complex supply chains over multi countries and certifiers. Using risk assessment to shift the bulk of oversight and additional record-keeping requirements to high-risk operations would allow NOP to use its resources most effectively.

The current roll-out of the Strengthening Organic Enforcement (SOE) Rule has revealed several areas where implementation of risk-assessment procedures is needed to help stop the burden of fraud prevention from disproportionately burdening small farmers. NOP needs to consider how smaller, low-risk operations are impacted by mapping of supply chains, identification of critical control points and weaknesses, processes for verifying organic suppliers and organic status of inputs, measures and processes for reporting fraud. To effectively use resources, NOP must issue clear guidance on how risk

assessment will be done, how to define or determine low-risk and high-risk, and shift the larger part of the oversight to higher-risk operations. NOP should consider allowing simpler certification documentation and possibly cycles of remote inspection for low-risk operations to reduce the cost of certification and the burden of paperwork. Continuing the work with certifiers to reduce the duplication of paperwork and form-refilling on certification renewals also reduces the recordkeeping burden for less complex operations that run similarly year to year. Additionally, improving and simplifying the process for farmers to document and present fraud concerns to the NOP would be helpful.

OFA has heard from a number of our farmer members that they are being asked to take on a significant burden of encouraging currently uncertified operations they may work with to become certified as now required by SOE. This includes storage facilities, private label brand owners, brokers, traders, wholesalers, distributors, importers, exporters, transporters, trans-loaders, and more. If these operations do not become certified, the farmer must find different ways to store and distribute their products or face dropping their own certification. For some small farmers, this additional responsibility and supply-chain tracking could discourage them from maintaining their organic certification.

Another area of risk-assessment that is of particular importance relates to section 205.403 of the Strengthening Organic Enforcement Rule, requiring that certifiers conduct unannounced inspections for a minimum of 5% of the operations they certify annually. We recognize the importance of codifying a minimum amount of unannounced inspections as a tool for ensuring the integrity of the organic certification system. At the same time, it is vital for the NOP to understand the significant burden that undergoing a second annual inspection represents for smaller organic farms and that these unannounced inspections not be selected randomly, but instead be tied to higher-risk operations.

Many organic-certified farms in the country are small-scale with a primary focus on specialty crops for direct markets and local restaurant/institution sales, where the farm owner and family are the primary labor force and operational managers. For these farms, the disruption involved in undergoing a certification inspection is significant and expensive, and putting them at risk of suffering the process three times in 13 months is inequitable, particularly to the extent that organic farms operated by Black, Indigenous, Hispanic/Latinx, and other farmers of color are more likely to be small-scale farms.

Moreover, the contribution that smaller farms make to the volume of organic crop and livestock production means that random inspections of these operations will have less of an impact on the organic marketplace, already making them a low-risk for marketplace fraud. The optimal use of certifiers' resources is to focus unannounced inspections on farms and handlers with a history of complaints or noncompliance, and farms and handlers that operate in markets with a higher risk for organic fraud.

Therefore, section 205.403 should be revised to require certification agents to establish parameters for assessing the risk of fraud that operations present, and to select operations for unannounced inspections that present this higher risk profile. The NOP should conduct evaluations of the risk-based criteria certification agencies use to identify operations for unannounced inspections, including assessment of the demographic characteristics of farm operators subjected to unannounced inspections, so that the

agency monitors for and corrects bias in selection that disproportionately impacts Black, Indigenous, and other People of Color-operated farms. It is incredibly important that through the USDA accreditation process, USDA ensures that discrimination is not being conducted under the National Organic Program.

Recordkeeping is Needed Regarding Hydroponic and Soilless Container Operations

OFA also requests that as AMS requests an extension and revision of previously-approved information collection “National Organic Program” [OMB Control No 0581-0191], AMS additionally include a requirement that the National Organic Program collect information on hydroponic and aquaponic organic systems.

To “assure consumers that organically produced products meet a consistent standard,” as mandated by OFPA, the National Organic Program (NOP) must require that accredited certifying agents obtain, and NOP must annually publish the following information:

1. The number of each of these operations that they certify:
 - a. hydroponic,
 - b. Aquaponic, aeroponic and other soilless container system operations;
2. The amount of land in soilless production they certify;
3. The countries where soilless products come from, detailing: Hydroponic, aquaponic, and other soilless systems.
4. The types and quantities of crops produced using soilless production methods;
5. The value of the crops produced using soilless production methods;
6. The labels and brand names used on all such products; and
7. The markets where these products are sold.

As Section 6513(b)(1), the OFPA states, “An organic plan shall contain provisions designed to foster soil fertility, primarily through the management of the organic content of the soil through proper tillage, crop rotation, and manuring.” Section 6513(g) states, “An organic plan shall not include any production or handling practices that are inconsistent with this chapter.”

To comply with the second purpose of the OFPA, the National Organic Program (NOP) must begin collecting information from all certified organic crop producers and all accredited certifying agents on how certified organic crop production operations “foster soil fertility” to verify compliance with OFPA 6513(b).

At the present time, the NOP accredits certifying agents that certify soil-based crop producers who comply with the soil fertility requirements of OFPA Section 6513(b)(1) and with 7 CFR Part 205 Section 205.2, General Requirements for Natural Resource Protection; Section 205.203 Soil Fertility and Nutrient Management; and Section 205.205 Crop Rotation.

Simultaneously, the NOP accredits certifying agents that certify hydroponic, container, and other soilless crop production systems that do not comply with the soil fertility requirements of OFPA Section 6513(b)(1) or with 7 CFR Part 205 Section 205.2, General Requirements for Natural Resource Protection; Section 205.203 Soil Fertility and Nutrient Management; or Section 205.205 Crop Rotation.

Soil-based organic production systems sequester carbon, fix nitrogen, build soil health, increase the water-holding capacity of soils, prevent soil erosion, foster the cycling of resources, promote ecological balance, conserve biodiversity and provide numerous ecological services.

Hydroponic, aquaponic and other soilless container growing systems do not sequester carbon, fix nitrogen, increase the water-holding capacity of soils, recycle nutrients, prevent erosion, enhance biological diversity, or protect ecological balance, yet the USDA allows such operations to be certified “organic.”

There are significant differences between soil-based and soilless crop production systems, but there is no data available to determine how much of the US organic market is comprised of the products from these two different production systems, since the products of both systems are labeled “organic” and allowed to carry the “USDA Organic” logo. Likewise, there is no data to research and compare the environmental and health impacts of these systems, since the products of both systems are labeled the same.

The NOP must begin collecting data on the type of production system used by certified organic crop producers to determine the number of soil-based vs soilless crop production operations and products, both foreign and domestic, that are being certified as “organic” under the National Organic Program.

Such data collection should begin by requiring accredited certifying agents to amend their organic system plans to ask specific questions to assess all crop operations’ compliance with OFPA Section 6513(b)(1), since the law states that organic crop plans “shall contain provisions designed to foster soil fertility.”

It is necessary to provide more transparency to the public to realize OFPA’s mandate that the NOP “assure consumers that organically produced products meet a consistent standard.” OFA asks that the NOP require accredited certifying agents who certify hydroponic, aquaponic and other soilless container systems to document these production systems and provide publicly available data to the NOP on the number of such operations that they certify; the amount of acreage or square footage in soilless production; the types and quantities of crops produced using soilless production methods; the expected vs actual yields from soilless operations; the value of the crops produced using soilless production methods; the labels and brand names used on all such products; the countries of origin; and the markets where these products are sold.

Since the United States is the only country where hydroponic and other soilless crop production systems are being certified as “organic,” collection of the information cited above is needed to verify compliance with trade agreements in international organic markets.

Because the USDA has issued no rules governing the soilless production of “organic” crops, it is incumbent on the USDA to collect accurate and detailed information on both soil-based and soilless crop production systems that are being certified as “organic,” to comply with OFPA Sections 6501(2), 6513(b), and 6513(g), and 7 CFR Part 205.2, 205.203, and 205.205.

Sincerely,

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

Kate Mendenhall
Executive Director

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