



September 30, 2021

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Submitted via [Regulations.gov](https://www.regulations.gov).

**RE: Docket #AMS-NOP-21-0038**

**NOSB Compliance, Accreditation, & Certification Subcommittee Subcommittee Discussion Document: Oversight improvements to deter fraud: Modernization of organic traceability infrastructure**

Dear NOSB Members:

Thank you for the opportunity to provide comments on the Discussion Document regarding Oversight improvements to deter fraud: Modernization of organic traceability infrastructure. MOSA certifies approximately 2,050 organic operations throughout the United States. As a large certifier, we are very much aware of the challenges of balancing strong enforcement with keeping certification services efficient and accessible.

We appreciate this continued discussion relating to Strengthening Organic Enforcement (SOE) and Human Capital. We support efforts to increase enforcement and prevent and decrease fraud in the organic industry. The objective of this continued discussion document is sound. However, we have concerns about potential burdens inherent in the proposal. We recognize and appreciate that it is the NOSB's stated intention "to not burden organic farmers, certifiers, or inspectors with additional paperwork." However, it is difficult to imagine how we'd manage a requirement for reporting transactions with the scope as indicated in the document. On the other hand, we agree with the point, "With considerable progress comes the need for comparably powered tools."

In our recent comments to the NOSB and USDA regarding the capacity improvement and strengthening enforcement discussions, and in many of our comments over the years, we have spoken to the interplay between ever increasing expectations for certifiers and the other regulators, practicality, and ensuring that certification remains accessible. Thanks for being sensitive to these questions of balance. We support strengthened standards to regulate a growing industry and to correct gaps, and we recognize the importance of sound and sufficient oversight as the key to the growing success of the organic industry.

With the Organic Link System (OLS) concept, we are both intrigued by the potential capability of the system and wary of the scope of reporting. We're interested in ways the scope might be linked to risk, and what types of operations might be exempted from reporting, to minimize burdens. Strengthening organic enforcement is important, but we also are very interested in ways we can find reasonable respite. Enforcement has many costs. In these times, and in our current organic regulatory system, a root constraint is the inability to pass financial costs for enforcement on to farmers. Our staff, and the contract inspectors we work with, are very conscious of the financial struggle many of our clients face, even with the organic premium.

Sound enforcement must consider fairness. We need stronger agricultural policies that support living wages for farmers and organic professionals and consider true value and cost accounting. Costs and burdens of certification are a fairness issue. MOSA is committed to social justice, fairness, and democracy through fostering inclusiveness and valuing diversity. We also recognize that our organizational vision of “a thriving organic world” requires balancing sound enforcement with socio-economic justice, ecological sustainability, and the interdependent well-being of individuals, communities, and ecosystems.

Below, we have more specific comments on the OLS and concepts in the discussion document with section headers consistent with those in the discussion document, followed by our responses to the questions for stakeholders.

**“Background” section:**

The document notes capturing “business-to-business” sales. Are there exemptions regarding what types of persons/business entities would be expected to report? Consider limiting mandated reporting when risk is low, or other reasonable exemptions to keep from adding burden and to enable organic certification to remain accessible. Also, consider the importance of organic certification cost share programs, which help smaller operations afford the cost of certification.

The document states that “The Organic program is a fully traceable food system.” While this may be the intent of the National Organic Program, consider whether this statement is true. In our certification work we often encounter minor gaps in recordkeeping. These may not be intentional, and then enforcement leads to recordkeeping improvements, but gaps still hinder full traceability. Be cautious of such statements that may not be totally true; these affect the organic system’s transparency. The document also says that when the organic program is operating at its full potential, products are traceable back to the fields in which they are grown. This is also not completely true. When there are aggregators within a supply chain, and an aggregator commingles multiple (maybe many) organic suppliers’ products, traceability does not enable moving from finished product all the way back to its origin, let alone in the fields in which they are grown. However, organic records do show that organic commodities maintain their integrity as they move through the supply stream, in one direction.

**“Human Capital and Data Management in Organics” section:**

We appreciate that this section notes both pros and cons of the current organic system. For confidence in our label, our Program should emphatically stress what is working well. Pros include that the current system has exceptional transparency compared to the rest of the food industry. On the other hand, it is true that decentralization and lack of industry-wide consistency hamper achieving the expectations of the consumer and enforcement communities.

We are particularly interested in the development of some sort of mechanism to readily share information between certifiers for traceability cross-checks. The OLS system may be helpful with this cross-check requirement. Database information may ameliorate the burden of providing certification cross-check information for other certifiers in a timely manner. We’re willing to provide information; cross-checks are a valuable enforcement practice. However, we may not be able to respond immediately to requests from other certifiers, and such requests are not predictable or foreseen. If the data system was independently accessible, “assess-able,” and reliable, the use of OLS could be much less troublesome than unpredictable requests for cross-check information from other certifiers. We also could consider a risk-based approach to identifying operations for cross-checks.

Although the OLS or another mechanism seems necessary for improving efficiency of cross-checks, we have some doubts about the efficacy of the OLS. It seems unrealistic to require this OLS information for every single transaction. And, since the system is untested, we wonder

whether the presence of the OLS system would have detected the types of large-scale fraud seen recently. Also, an electronic system has potential for manipulation with less evident “fingerprints” than we can see in paper systems.

**“Continuous Improvement Exists for Supply Chain Traceability” section:**

We are glad that continuous improvement is part of the framing for the Strengthening Organic Enforcement discussion. At our last NOP accreditation audit, our auditors said something about moving toward meaningful enforcement and beyond continuous improvement, as if continuous improvement was being deemphasized. In hindsight, we could have had more discussion to gather more context for that comment. We see continuous improvement as an organic tenet.

This understanding of continuous improvement was affirmed in a recent announcement (9/22/2021 press release) regarding a series of workshops to be launched by the Organic Trade Association and the Swette Center for Sustainable Food Systems at Arizona State University. The workshops will bring together a diverse coalition of stakeholders to take a no-holds-barred look at organic, and what has worked and not worked since the federal organic program began, with an eventual release of a report outlining tangible improvements to the law and regulatory process within USDA. The announcement says “continuous improvement is the bedrock of organic. The workshops will explore how continuous improvement should be defined in the law and regulations, and discuss how the organic standards can be modernized to include important labor, social and emerging environmental challenges to position organic as the most sustainable, transparent and socially conscious food system.” Meanwhile, Congress has introduced the bipartisan Continuous Improvement and Accountability in Organic Standards Act.

In this section of the document we appreciate the valid and good point regarding inspections occurring in isolation and the need for inspectors to have an easier way to cross check and reconcile data on both sides of a transaction.

We also are glad to see affirmation that technology must play an essential role in supply chain traceability, verifiable organic products, and near instantaneous tracking at the item level. We’ve seen the use of technology improve the efficiency and efficacy of issuing international transaction certificates.

The use of technology and innovation as organic moves forward is also affirmed by the international organic community. One key feature of IFOAM’s [Organic 3.0](https://www.ifoam.bio/sites/default/files/2020-05/Organic3.0_v.2_web.pdf) concept paper ([https://www.ifoam.bio/sites/default/files/2020-05/Organic3.0\\_v.2\\_web.pdf](https://www.ifoam.bio/sites/default/files/2020-05/Organic3.0_v.2_web.pdf)) is “a culture of innovation.” The paper says in part, “To successfully address the challenges of the 21st century, a combination of social, ecological and technological innovation is essential. Organic agriculture is not a farming system that is disrupted by inappropriate new technology, nor dominated by conservative thinking.” ... “This includes revival and enhancement of traditional knowledge, and possible combination with new high potential technologies of which the organic movement is presently rather skeptical, but that are in line with holistic system approaches. Some examples illustrate the way in which a culture of innovation will help:...Smart technologies such as... information and communication technology... Use of modern Internet technology by social networks, by food, fashion, personal care and health movements and by urban farming, community supported agriculture and collective land ownership initiatives etc., to democratize the value chain.”

Further, at the IFOAM General Assembly in early September, the international community also affirmed the importance of organic data collection, by passing a motion on Improving Global Organic Data Availability. This said, “IFOAM – Organics International should cooperate more closely with FiBL in order to improve the availability, quality and accuracy of global organic area and crop data.”

### **“Organic Link System (OLS)” section:**

This part of the document notes, “There can be many landing spots for shelf-stable products...” This again raises the question for us, which “landing spots” must use the OLS system? We additionally recognize that sometimes organic products move between businesses without a concrete landing spot. As to the scope of the OLS and complicated movements of products between businesses, special consideration is needed regarding virtual sales, or other product movement without a landing spot.

### **“OLS Implementation and SOE Compatibility” section:**

In general, we think an organic link data system as a part of implementing the SOE requirements is a good concept. However, we are very wary of the burden of inputting data into the system. We need specificity regarding what data elements are required, and it must be practical to provide them. What allowances would be made for data that is not currently available?

The SOE amendment requiring certifiers to share supply chain verification information with other certifiers is among challenges that will make a stronger system, but may be difficult to accomplish. We agree that a robust OLS system, or similar electronic mechanism that can be used for auditing the supply/distribution chain, will be more efficient and will enable certifiers to better manage our capacity.

### **“Barriers and Solutions for OLS Integration” section:**

#### **1. Inadequate access to technology and connectivity**

We have some concern that developing an electronic OLS is exclusionary to many types of operators who do not use and/or have access to technology. Who, then, would have the responsibility of uploading data into the OLS?

We have some concerns over who would have access to data within the OLS. If OLS is available to certifiers and inspectors through some sort of controlled permissions, then we’d assume that the producer or handler entering the information would only see their own information. Also, we assume the USDA would have access to OLS data, but that may raise questions around use of confidential business information.

We are very pleased that the Barriers and Solutions section notes a “need to not burden organic farmers, certifiers, or inspectors with additional paperwork.” It is imperative that we do not lose sight of this need. However, with the scope of the data to be put into the system, it seems that some additional recordkeeping burden on organic operators is inevitable. It seems that the work this would all take is not realistically portrayed in the document. We advocate that none of our clients be burdened with additional paperwork.

We understand that stronger enforcement likely requires additional recordkeeping, and have concerns that this burden be equitable and based on relative risk. It is good to consider exemptions, such as sales direct to consumers. Consider other possible exemptions, based on risk or supply chain complexity. It seems that OLS data is most important for large quantities. Also, when considering other possible reasonable exemptions, it should be noted that the organic standards have exemptions and exclusions from certification requirements. These will be more limited under SOE. Exempt and excluded operations may still choose to be certified. Exemptions from OLS reporting would not coincide with exemptions/exclusions from certification requirements. How will this be reconciled?

It is unclear whether or not the OLS data considers transactions of multi-ingredient or processed products or livestock or livestock products, or if it is just intended for tracking transactions of single raw agricultural crop commodities. One shipment of a bulk ingredient can

become a part of many different products after processing. How would OLS data accommodate tracking splitting and combining of lots?

## **2. The expense of implementing an electronic system**

The document also mentions an initial upload, by the certifier, of mandatory data for each operation, followed by annual maintenance of information. What information will be required in the initial upload by certifiers?

## **3. Human Capital**

Thanks for recognizing our public comments concerns regarding certification systems becoming more complex. We caution that such complexity must not disenfranchise parts of the organic community, including participants who may be beyond the point of first transaction, but still may have limited technological resources. Again, we suggest consideration of exemptions from OLS requirements based on risk or supply chain complexity.

It may be useful to consider another feature of IFOAM's Organic 3.0 - Diverse Ways to Ensure Transparency and Integrity. This says in part, "Different, new verification schemes may become practiced depending on the length and complexity of value chains. Reputation economy and web-based communication technology offer new opportunities; the organic movement must be open to this. For long chains, the process-oriented paperwork might be complemented and reduced by modern authentication, tracing and tracking technologies, which will become widely used as they become more affordable (e.g. remote sensing, highly improved analytics). Third-party certification will remain important particularly for marketing in large quantities in retail chains. The Organic 3.0 model in this case must entail reforms to lower the burden of producers for onerous reporting requirements."

### **"Summary" section**

We are concerned about the statement, "transitioning our current system from process-driven certification to data-driven certification with electronic verification is imperative." Data is useful, but cannot by itself be the basis for certification. We need space for certification to be an assessment of processes, not just data. Looking at processes allows for reasonable situational adaptability, and keeps good communication and critical thinking in certification. Let's not lose the socially conscious, human element. Organic production is art, and science, within a living system of changing variables. Also, many organic practices and outcomes are not readily convertible to data.

### **Questions for Stakeholders:**

*1. How can technology efficiently and effectively be deployed to enhance supply chain traceability?*

We agree that technology is a necessary part of improvements. We suggest leveraging systems that are already in use, such as the NOP Organic Integrity Database.

If multiple systems are used, these will need to be able to interface with each other. It is important to identify key data elements to make the system effective in identifying potential fraud. Ideally, the system would be able to automatically flag apparent anomalies.

*2. What form does an organic link system (OLS) must take to be non-burdensome for organic stakeholders, including certifiers, inspectors, handlers, operations, importers, etc.?*

In a perfect world, our first response is that OLS data would somehow automatically enter the system. But that doesn't seem possible, since there are so many types of transactions between so many different organic businesses.

It is hard to envision how something like this could work without burden for all stakeholders, if every single transaction were recorded, including “specific data to be captured would include the date, NOP certificate number (found on the SOE standardized certificate), year product was grown, the quantity of organic goods exchanged, etc.” What does the “etc.” entail? We need clarity on what data must be gathered.

It seems difficult to design a single, centralized system that is practical for global use, and practically-applicable for all operations. The system must be adaptable. Recordkeeping flexibility is part of our current standards. Standard section 205.103(b)(1) says records must be sufficient to show compliance, but also may be adapted to the operation.

The system will be less burdensome if it is similar to current reporting measures, uses existing technology or labeling, and enables reasonable exemptions and alternatives.

### *3. What challenges exist with the implementation of an organic link system (OLS)?*

As described above, we have general concerns that the system would be burdensome, could disenfranchise some users, and hinder accessibility to organic certification. There are some challenges with technology access for some users.

We also see challenges with confidentiality. How would transactions data be made available to organic’s enforcement sector, while protecting transaction information so it’s not available to all?

There are concerns with how the data might be used, beyond organic enforcement. Many organic operators are highly-protective of their confidential business information.

It seems very challenging to be able to develop one system that is appropriate for all users.

### *4. Is there value in AMS, certifiers, and inspectors getting more granular with transaction-level detail to gain transparency throughout the complex supply chain?*

On the surface, there would seem to be value in having more transaction data available and accessible. However, the value is unclear without more information. We need a thorough plan regarding what data points will be collected and how these will be used for enforcement objectives.

Perhaps our trustworthy organic verification systems currently in place and the improvements that are outlined in the SOE already have sufficient value, although technological tools do seem necessary to make the implementation of SOE improvements practical.

### *5. What other methods exist for enhancing transparency?*

We support increased supply chain transparency, such as including the identity of manufacturer or packer listed on label. Private labeling leads to inconsistencies in labeling and lack of traceability. SOE requirements will help to patch this gap.

### *6. Are there additional areas that need to be considered for improvement to prevent fraud or react to fraud?*

Consider how to handle public messaging regarding fraud, and the positive aspects of our current enforcement system. Successful enforcement should be seen as a positive, but instead, too often the focus in the press is that the existence of fraud indicates the organic system is

failing. In our experience, most organic operators operate with integrity and commitment to improvement, and there are far more success stories of robust enforcement than there are of deceitful fraud. We understand that, unfortunately, such “good news” is not as saleable to the public eye. Related, we must also consider how transparent we are regarding the soundness of organic enforcement and fraud prevention systems. If we overstate the transparency of organic practices or overpromise our oversight capability, then in fact we are not being transparent. Good public relations in integrity with organic values necessitates honesty.

We need to consider targeting and a risk-based approach, and financial relief. Unchecked enforcement improvements will significantly drive up certification costs, with a bigger relative impact put upon smaller operations, and that may limit certification accessibility.

Design organic standards to be more scale *critical*, as opposed to scale *neutral*. For example, large dairies and international imports have increased risks to organic integrity, and that risk and financial impact is leading to strengthened enforcement mandates that impact all operations, inequitably. Large-scale organizations, by default, may have a greater need to focus on profit versus human and planetary bottom lines. Increasing efficiency to achieve higher yields can be at odds with more agroecological approaches for better sustainability. Large operations have market advantages within our current agricultural system and are less inclined toward systemic change.

Develop requirements and mechanisms for certifier to certifier cross-checks.

*7. Should the industry require the registration of land 36 months before certification?*

Additional background is needed on this question. It seems unrelated to themes in the rest of the document. A 36 month registration requirement could be very limiting to organic business expansion, such as disabling the common practice of converting land that is organic-eligible but previously-uncertified. Ideally, certifiers would be aware of plans to transition new land to organic well in advance of the certification request, for improved oversight and possible identification of concerns in time for them to be corrected without causing delays. However, this earlier notification should remain optional, and does not seem necessary if there are sufficient records to show organic management.

Thank you for your forward-thinking as we all continuously improve our enforcement work and aim toward a thriving organic world, with balance.

Respectfully submitted,

The MOSA Certification Team