

Comments by IFOAM-Organics International

USDA-NOP proposal – August 2020

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Introduction

IFOAM-Organics International is the global umbrella organization for the organic movement. We represent more than 800 member organizations in more than 100 countries. Given the importance of the US market for the global organic sector, we feel compelled to provide an international perspective on the proposed amendments to the USDA organic regulation, and we thank the USDA for this possibility to comment.

First, we acknowledge the relevance of the stated purpose of the proposed amendments, namely to strengthen oversight and enforcement, as well as protect the integrity of organic supply chains. We wholeheartedly agree with the overall intent of the regulation. We also agree that the U.S. organic sector has been considerably damaged by organic fraud, much of which is the result of international organized crime. Consumers and legitimate organic operators in both the US and worldwide are suffering from fraudulent products and the unfair competition they represent. These practices drive organic prices down and legitimate organic producers out of the market. As a result, we see growth of organic agriculture in the US that is way below what would be expected given the growth in consumer demand. We agree with the USDA that it is urgent to address the fraud issue and review the regulation with an increased focus on strengthening organic enforcement. **We therefore strongly support the proposed regulation, with some specific recommendations for improvements. We believe that overall, the regulation brings more benefits than costs, and ask that the suggested improvements not be used as an excuse to delay its much-needed implementation.**

North American members of IFOAM-Organics International, including the Accredited Certifiers Association (ACA), the International Organic Inspectors Association (IOIA), the National Organic Coalition (NOC), and the Organic Trade Association (OTA) are also concerned about organic enforcement, and have informed us they intend to submit detailed comments on various parts of the proposed regulation. We offer our comments with the intent they are in harmony with their individual comments. Where IFOAM-Organics International members share a consensus, we too are in support. IFOAM-Organics International itself will primarily focus its comment on section 16 on grower groups, because this is our expertise and concern as a global organization taking into account the perspective of smallholders globally. In the past 18 months, we have renewed work and consultation on this topic, alongside the process of revision of the EU organic regulation, which also includes revised requirements on group certification.

Besides the comments on grower groups, which are detailed below, we also would like to submit some general comments, given in the executive summary below:

Executive Summary

IFOAM Organics International recommends the following:

- 1) Finalize and implement the proposed amendments, incorporating our recommendations below and the comments of our members, including ACA, IOIA, NOC, and OTA.
- 2) Adopt the minimum of 5% unannounced inspections, which is consistent with IFOAM's own Accreditation Requirements.
- 3) Ensure competent inspectors and reviewers consistent with the comments made by the ACA and IOIA.
- 4) Improve transparency and reporting of operator-level country, product, and acreage data in the organic integrity database (OID). Indeed, currently there are no means to accurately calculate organic acreage and/or yield estimates on a country-by-country basis, which is a significant bottleneck in tackling fraud. Having certifiers consistently report such information would be the most important change that could be made by the USDA in this revision round in order to improve integrity in global organic supply chains.
- 5) The suspension or revocation of accreditation by an organic trade equivalency partner should immediately trigger an investigation by the NOP.
- 6) Enlarge the geographic scope of its current and future organic equivalency agreements in order to ensure that all products certified to each system, regardless of where they are produced, are accepted by the other partner. This, we believe, will tremendously reduce the need for multiple organic certification by producers in "third countries", which drives up the cost of organic products without significant integrity benefits.
- 7) Further improve the grower group requirements, in line with our comments below.

IFOAM comments on the new grower group section:

IFOAM-Organics International welcomes the proposal to codify grower group certification as part of the USDA Organic regulation based on NOSB recommendations. This proposal should ensure continued acceptance of the practice of grower group certification, which is the most common certification tool in the global organic sector, used for approximately 2.6 million organic small-scale producers worldwide, while at the same time strengthen the integrity of this system.

IFOAM-Organics International has consulted the organic sector broadly on the topic of group certification throughout the world in response to the revision of the EU Organic regulatory framework. The EU is currently finalizing the basic rules set in the new Regulation (EU) 2018/848, completely re-define the rules for organic grower groups worldwide ¹. Most grower groups are

¹ The new Organic Regulation (EU) 2018/848 is a final legal act. Its enforcement has just been postponed to January 2021: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R0848>. The "delegating and implementing acts" are not yet finalized, and public consultation of the last drafts has just closed. Implementing regulation (control rules): <https://ec.europa.eu/info/law/better-regulation/have-your->

certified according to both regulations (US and EU) and harmonized requirements between the two systems would be beneficial for growers and consistent application of rules. However, there are some aspects which we believe that the EU current draft will not effectively boost systemic integrity and we therefore do not recommend that the USDA align to those.

Although we generally support the content of the new proposed NOP requirements, we have some concerns on some of the provisions, and appreciate the opportunity to offer some recommendations on their improvement. Our comments are based on multi-stakeholder consultations processes led within our broad global network, of which you can find a description at <https://www.ifoam.bio/our-work/how/standards-certification/internal-control#introduction>. We particularly recommend the reading of the report of the May 2019 IFOAM International workshop on Group Certification, as it contains the background of the discussions that led to the recommendations we make below.

The overall objective of IFOAM-Organics International in providing comment to this process is to help preserve market access for legitimate organic groups and smallholder growers, as well as strengthening the oversight and control of grower groups (in particular on the re-inspection rate and quality of external inspection) to address the challenges found in the past decade.

IFOAM-Organics International answers to the consultation questions:

1. Size Limits for Members: Should there be limits on gross sales or field sizes of individual grower group members? If yes, please describe these limits.

IFOAM norms do not *per se* set a size limit for farm members in a certified group, but stipulate that large farming units, processing units, and traders shall not be included in the inspection arrangements for such groups, and shall be externally inspected as per applicable control procedures for farms and handlers respectively. This has also been the approach historically used up to now under the EU regulation. Indeed, the EU organic import guidelines², which are still applicable at least until 2021, require that all farmers whose turnover exceeds 2% of the cost of individual certification need to be externally inspected individually if they are part of a group. This criterion was developed in a series of international workshops organized by IFOAM on smallholder group certification in 2001, 2002 and 2003.

Therefore, **the practice has been, not to exclude bigger farmers from being group members, but to require specific external inspection approaches for them if they were part of a group. After discussing this issue intensively again in 2019 and 2020, we believe that this remains the better approach.** Details of these recent discussions are included below to back-up our position.

[say/initiatives/11716-Control-rules-in-organic-production](https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/farming/documents/guidelines-imports-organic-products_en.pdf) Delegated regulations (criteria and conditions for the checks of documentary accounts): <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11717-Control-rules-in-organic-production>

² https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/farming/documents/guidelines-imports-organic-products_en.pdf

We discussed the topic intensively in our 2019 consultation process, triggered by new EU Regulation that set limitations for the size of group members, in Art 36(1)(b). The planned thresholds would limit group certification participation to farmers with less than 5 ha, or turnover from organic production lower than €25,000 (just under US\$30,000 at the date of the comment period), or cost of certification that would be more than 2% of farm turnover. To put this process into context, the 5 ha (slightly over 12 acres) or €25,000 (just under US\$30,000) are new limits that were introduced in the new EU regulation (Regulation (EU) 2018/848 Art 36.1) after intense discussion, specifically to address the novel option for EU growers to also become certified as a group — now permitted under the new regulation.

12 acres or a US\$30,000 turnover is still not a very large farm, even in developing countries. The exclusion of these farms from group certification and being part of the certified legal entity will be an economic burden to many entities currently exporting to the U.S, and will not boost integrity. Indeed, having progressive, mid-sized, well-managed, and expanding farms is considered important by groups to boost volumes and serve as models of good organic practices to other group members. Excluding strong members would weaken the whole group, as such bigger farms often take a leading role in peer-learning concepts for the group.

Many such mid-sized farms would still not be in the position to cover individual inspection and certification costs, particularly without access to reimbursement by the USDA Certification Cost Share program, or manage the necessary documentation and administration, and will need the help and support of participating in and selling through an organic group.

This would mean that many committed organic medium-size growers for various commodities (such as: cocoa, bananas, and coffee) would have to revert to conventional farming as they could no longer be certified as part of the group because individual certification would no longer be financially viable for them.

Establishing a limit on gross sales that forces members above that limit to leave the group raises the risk, if that limit is placed too low, and the rule in fact facilitates only large plantations who can afford their single certificate, or very poor small producers, with nothing in-between. It also raises the threat that well-performing small farmers will be expelled from the organic supply chain as soon as they reach a more economically viable situation, cancelling out sustainability objectives.

Additionally, the experience of UTZ, which has tried to set strict farm size limits as a group requirement, showed that such rules may lead to artificial changes on paper to meet these size restrictions, e.g. by “splitting” the farm in two parts, for the husband and for the wife. This will not contribute to the rule’s intent to boost integrity.

2. Should there be a limit on the maximum number of members allowed in a grower group operation or in a grower group production unit? If yes, please describe these limits.

This topic was also intensively discussed in the recent IFOAM – Organics International consultation process. There are indeed some concerns about the control of very large groups of operators: a “too-big-to-fail effect” resulting in zero — or only partial — sanctions; too low

control rates due to the square root sampling approach; and less effective internal control and training of farmers.

We do not believe that limiting the number of members is the best approach to address the above legitimate concerns. Instead, we recommend to introduce, for large groups, a clustered approach with possible de-certification or suspension of specific clusters, and the introduction of additional requirements for the re-inspection rate and quality of external inspections (see specific comment on this in a section below). We provide details of the recent discussions below:

A. No voluntary sustainability schemes or organic regulations have so far restricted group size, except the Indian NPOP. The Indian case has shown that this can result in very artificial structures, with organic farms in the same village being certified in different “ICS” run by the same exporter. Indeed, many groups need to be much bigger than 500 farms to produce viable export volumes and run a professional ICS.

B. Operating an efficient, professional ICS and farmers support service implies significant costs. This, together with the often very small farm size (typically 1-2 ha total farm land) and resulting very small product volumes from each certified group farmer, means that the vast majority of farms are certified in groups with several thousand members.

C. Artificial certification structures imposed by arbitrary requirements, such as the 500 NPOP or the proposed 2000 EU limits to the number of group members, do not promote integrity. We believe that it would be best to let the group size be governed by market economics, as long as other measures are in place to address the aforementioned integrity concerns.

D. We suggest requiring very large groups have a clustered structure in order to ensure close ICS supervision, and allow for partial de-certification of the grower group by decertifying defined ICS clusters if the ICS would be found to be failing only in one of these. Our clustered structure alternative is compatible with the new NOP proposal of requiring a large group to be organized in several manageable “Grower group production units”. Perhaps clarification could be added that the certifier may impose a de-certification of one or several units as an intermediary sanction if only some units are found dysfunctional, and not the entire group.

E. We also argue that the problem of ever-increasing group size can be addressed by an adjustment of the re-inspection rate, rather than by a fixed group-size limit. Indeed, adjusting the re-inspection rate can decrease the economic incentive that currently exists for groups to merge into very large groups as a way to reduce the external control rate, and therefore the cost of certification and the intensity of the oversight. Our proposal is to introduce a minimum percentage (see separate section below). Introducing such minimum percentage, we believe, will already do a lot to halt the trend of ever-expanding and consolidating groups.

3. Should there be a limit to the geographical distribution of members? This includes limits to the maximum geographical proximity or distance between grower group members, grower group production or gathering areas, or grower group production units within a single grower group operation. If yes, please describe these limits.

All organic requirements that recognized group certification— including the IFOAM Accreditation Requirements—have long stipulated “geographical proximity of members” and “homogeneity of production” as conditions for group certification. That said, geographic proximity would be difficult to define with world-wide applicability.

We recommend not to develop more prescriptive rules on geographical proximity of group members. Homogeneity of production systems within the group is equally, if not more, important than a (relative) geographic proximity. However, we agree that groups should not go beyond the border of one country.

It is important to consider the homogeneity of production and geographic proximity also in the sampling rules of certified products to ensure that clusters of farms are adequately sampled.

Other IFOAM-Organics International comments on the draft grower group requirements

§205.2 Definitions and 205.400 g(2) Scope of applicability:

To avoid confusion and risks of misinterpretation, we recommend scope-neutrality and that the definitions clarify that group certification should allow the inclusion of multiple crops. The proposed definitions of “grower group member” and “grower group operation” may be misinterpreted as a single crop and/or wild crop instead of a multi-crop system. We believe that this is not the intention of the rule and that the definition of “grower group operation” indicates that the word “single” refers to the operation and not the crop. Indeed, single crop systems run counter to biodiversity.

We further recommend that all producers, including livestock, should be eligible for group certification provided the group has a strong internal control system and meets other regulatory requirements. We recommend scope-neutrality in terms of eligibility for group certification and that any concerns about increased risk of livestock operations can and should be addressed through risk-assessment.

We do not fully understand the value of the proposed restriction of grower group certification to crop production and handling (excluding animals), although the vast majority of grower groups do indeed produce crops. We would also like to highlight the fact that group certification will soon also be allowed within the EU. We expect some livestock-rearing smallholders, such as alpine/Mediterranean dairy producers organized in cooperatives, to become certified through the group certification method. Additionally, some honey production is currently certified under EU regulation through the group certification system, which we do not find problematic. Wild collection, on the other hand, has its own specificities which may not make the grower group system requirements directly transposable. We therefore propose rewording the scope of applicability.

Taking into account our concerns on both definition and scope, we recommend amending the definition of group members to *“an individual engaged in the activity of primary organic*

production as a member of a grower group operation” and to delete other references to “crop and/or wild crop”. Similarly, the definition of “Grower group operation” should be changed to “A person consisting of grower group members in geographical proximity governed by an internal control system under an organic system plan certified as a single production and handling operation for primary production”, consistent with the definition of “person” in the rule.

§205.403 Re-inspection rate and quality of external inspections:

The proposed re-inspection rate in 205.403 ($1,4 \times \text{the square root}$) is the rate currently used in the IFOAM Accreditation Requirements for “high-risk” groups.

However, in the 2019 and 2020 consultations and discussions, we realized and acknowledged concerns about the growth and consolidation of groups into very large groups, where the oversight intensity decreases as an implication of the square root system. Indeed, for very large groups, the percentage of re-inspected farmers becomes too low.

Therefore, IFOAM – Organics International now considers it necessary to introduce an additional minimum control rate in a carefully selected percentage. We recommend 2-3%³.

We observed that the EU Commission has proposed, in its current draft, to abolish the square root approach and to require at least 5% of individual external member inspections each year.

We object to this percentage and would like to see it brought back down to 2-3%. While 5% equals the square root in a group of 400 farms, organic groups with more than 400 farms are extremely common and considered well-sized for efficient internal and external controls. Expert opinions on where the square root starts to become too weak vary typically between 1,000 and 2,500 farms. This corresponds to a minimum control rate of 2-3%.

However, the size of the sample is only one factor. The quality of external inspections is equally, if not even more, important. To ensure that increasing the sample size does not result in lowering inspection quality, we therefore recommend to introduce requirements to ensure that the external farm re-inspections are full-farm inspections, verifying all relevant standard requirements according to a defined minimum protocol and adapted to the risk of the member’s production system. The inspection findings should get cross-checked with the findings of the internal control. For this reason, IFOAM – Organics International concluded in its consultation that there should be a limit of 6 farms/inspector/day on average. The experts have proposed the following formulation for an upcoming amendment to the IFOAM Accreditation Requirements, which we would recommend to USDA as well:

“The sample referred above shall be composed of full farm inspections, for which the number of farm inspections performed per inspector and per day is to be recorded and centrally documented at the CB level. This number is expected not to exceed an average of 6 farms/inspector/day, except in very specific cases, with justification to the Accreditation Body.

³ We have not yet updated the IFOAM Accreditation Requirements in line with this new recommendation, but intend to do so as soon as possible.

(Issue-focused partial inspections are also recommended and may also be done at a higher daily rate, but come on top of that minimum sample, not in replacement of full farm inspections)."

205.400(g) Products sold as organic are from grower group members only:

Proposed point 205.400(g) reads "(5) Ensure that all crops and/or wild crops sold, labelled, or represented as organic are from grower group members only". The rationale clarifies that the intent is that a grower group operation may not buy crops and/or wild crops from non-member growers and sell, label, or represent them as organic using the grower group certification.

We agree with this requirement but would like to point out that it may become problematic if the USDA opts to restrict group memberships to farms below a certain size. In such a case, the group may still need to buy from closely associated medium-size organic farmers that may be part of the same cooperative while being certified by the ACA under their own separate certificate.

§ 205.400(g)(8) Onsite Inspection / High risk members:

The onsite inspection section states that "Certifying agents would need to inspect each handling facility and inspect at least 1.4 times the square root of the total number of grower group members. This number must include all high-risk members (determined according to the criteria proposed in § 205.400(g)(8)), (...)"

The statement that "ALL high risk members" of any group need to be externally inspected, in combination with the requirements under the section on risk management and risks to take into consideration for sampling farm members to inspect, raises several questions:

- In any case it should be clear that the certification agent determines the "high risk members" based on the group members own risk assessment but after verification that all high-risk members have been identified. This is consistent with the EU standards which expect certifiers to determine risk of members and perform these assessments.
- In the past, there have been inconsistencies in the interpretation of whether ACAs should inspect 100% of new group members under the NOP. The current ruling does not seem to directly imply that all new farm members are "automatically" high risk and hence need to be externally inspected, but this particular aspect has led to significant confusion and inconsistencies in the past. The current proposed text does not clear out this potential confusion.
- **100% external inspection of new group members is unfeasible for large groups (who may have too many new entrants in a given year) and for new groups (in the first year, everyone is a new member).** We highlight the fact that this interpretation would be a very noticeable divergence from the EU organic regulation requirements for grower groups (both in the old and new EU regulation no such requirement exists) and that it is un-necessarily burdening for NOP-certified groups. This would likely result in increased prices of certain commodities for the US market and potentially create a competitive disadvantage for US processors (as compared to EU processors) sourcing imported ingredients that are typically produced in grower group systems. This concern relates to

our earlier mentioned concern about possible decrease of thoroughness and quality of external inspection in case the external inspection rate is set (too) high.

However, we recommend to require that the ICS procedures should include a description of the procedures for accepting new members and that they ensure that an onsite inspection is completed by the ICS prior to accepting the new member into the group.

Group certification as a separate accreditation scope:

We recommend to add a separate accreditation scope for ACAs to conduct grower group certification. Indeed, grower group certification is a significantly different form of certification and requires the ACA to have developed specific qualifications and operational procedures for it. We observe that the level of competence of ACAs is very heterogenous when it comes to group certification, and we have identified as a specific problem the lack of oversight of certifiers by authorities and accreditation bodies with regards to group certification. In the IFOAM Accreditation system, we have a separate accreditation scope for this, meaning that some certifiers are accredited for group certification, and others are not. Those who are accredited for group certification are subject to specific oversight for this activity, in addition to their other activities.

Grower group certificates:

We recommend that each NOP certificate for a farm operation should indicate whether it is a single farm certification or a grower group, and that the total number of farm members (and preferably even their total certified organic area and crops) be covered under the certificate. The proposed new rule does not include a requirement on what information needs to be displayed on the grower group certificate. NOP Certificates of groups currently do not commonly include the number of group members covered under the certificate (as part of the public operator certificate). The certificate does not necessarily indicate clearly that it is a certificate for a group of farms either, nor is this very crucial information available in the USDA Integrity database information. This lack of transparency, and confusing situation for compiling statistics on the scale of organic group certification, is a serious concern. We want to point out that the new EU organic regulation requires the certificate itself to include a list of members of a grower group.

ICS record keeping:

We note that the group certification requirements lack rules for which kind of records the ICS should at the minimum maintain, including

- Lists that include each group members, locations, products, and acreage;
- Signed member agreements;
- Internal inspection reports, and;
- Documents related to internal sanctions and corrections.

Member training and inspector conflict of interests:

We recommend strengthening ICS requirements for member training to ensure that all group members understand, and can comply with the organic regulations. Indeed, various studies have shown that the most important aspect of ensuring group compliance is often the capacity-building of the group members. In many countries, there are no available organic extension services, and therefore the ICS would be the only provision of advice and training which can help farmers understand and comply with the standard.

On this topic, we would also like the member training requirement to acknowledge that there is a need to allow internal inspectors to conduct member training as well. This, we believe, does not constitute a significant conflict of interest for internal inspectors. On the other hand, internal inspectors should not be allowed to inspect their own relatives or to act as buying officers, as this would constitute serious conflicts-of-interest.

Internal inspections of group members:

We recommend including regulatory clarifications and guidance to ensure that internal inspections conducted by the ICS are robust and consistently implemented.

Group members need to be present onsite during their internal inspection so that the ICS personnel can interact with and question the member to ensure full understanding of the activities on that member's production site. Additionally, the ICS procedures should include a description of the procedures for accepting new members and must ensure that an onsite inspection is completed by the ICS prior to accepting the new member into the group.

Conclusion:

IFOAM-Organics International supports the intent of the proposed regulation and calls for its speedy adoption and implementation. We believe that some improvements are possible and needed on the group certification section, but those should not delay the implementation of other, much more consensual parts of the proposed regulation.

For the record, IFOAM-Organics International states that integrity is more than a matter of adequate control requirements. If the USDA wants the support and cooperation from its trading partners, it should keep in mind that the overall goal of international harmonization depends on all trading partners understanding and adhering to the Principles of Organic Agriculture. In that context, please consider our previous comments for matters not currently up for the current consultation. For example, the NOP should make it clear that organic farming is a soil-based system based on ecological principles and practices, and hence prohibit hydroponic production. It should also restore the Organic Livestock and Poultry Practice standard, eliminate landless factory farms with zero transition times and eliminate the loophole in the rules for the replacement of organic dairy stock.

Thank you for considering our comments. We appreciate the opportunity to harmonize international organic regulatory processes and promise to remain available for further assistance in either rulemaking or the implementation of high integrity organic standards.