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Jennifer Tucker  
Deputy Administrator, National Organic Program  
USDA-AMS-NOP  
1400 Independence Ave SW,  
Room-2642-So.,  
Ag Stop 0268  
Washington, DC 20250-0268

RE: Docket No. AMS-NOP-17-0065; NOP -17-02

October 5, 2020

RE: National Organic Program, Docket Number AMS-NOP-17-0065, Strengthening Organic Enforcement, 85 Fed. Reg. 47536 (August 5, 2020)

Dear Deputy Administrator Tucker,

The American Spice Trade Association (ASTA) appreciates the opportunity to comment on the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) National Organic Program (NOP) rule on Strengthening Organic Enforcement, 85 Fed. Reg. 47536, August 5, 2020, Docket ID ANS-NOP-17-0065.

## **Background**

ASTA was established in 1907 and serves as the expert voice of the U.S. spice industry in the global market. Member companies are involved in all aspects of the spice trade: importing, growing, processing, and marketing at both the wholesale and retail levels. Approximately 200 companies are members of ASTA. ASTA members manufacture and market the majority of spices sold in the U.S. for industrial, food service, and consumer use. The highest priority of ASTA and our members is ensuring the supply of pure, safe spice to American consumers.

The spice industry is a part of the overall food and agricultural sectors, which accounts for about one-fifth of the U.S. economy. While ASTA's member companies include multinational corporations, the majority of its members are small businesses. Some long-standing, multi-generational, small business spice companies, several of whom have operated for over 50 years, are an integral part of the spice

industry. Organic spices are a smaller, but steady and increasing, part of the spice industry. ASTA has member companies that work in both conventional and organic spices, and member companies that handle only organic spice products.

ASTA has a longstanding commitment to reducing all fraud in the spice sector, including organic fraud. As part of ASTA's vision statement, ASTA works to "ensure the supply of pure, safe spice" for the industry. As part of this vision, ASTA has worked for many years to promote integrity in spice supply chains. ASTA applauds the NOP's vision to strengthen organic enforcement through the proposed rule, and to make the organic supply chain more accountable and less susceptible to fraud. Overall, ASTA strongly supports the NOP's proposed rule for Strengthening Organic Enforcement, and supports the rule and its goal to combat organic fraud. ASTA's comments and concerns focus on three very specific parts of the rule, which are indicated below.

ASTA would like to offer comments on the following topics and section numbers:

- **Section 1:** Applicability and Exemptions from Certification. ASTA does not support requiring brokers, who simply put two parties together and do not take possession of the product, to become organic certified handlers.
- **Section 3:** Labeling of Nonretail Containers. ASTA requests flexibility in the ways in which the certifying agent is disclosed and tracked throughout the supply chain. Some types of bulk industrial packaging do not lend themselves to on-package labeling.
- **Section 16:** Grower Group Operations. ASTA supports the proposed rule changes for grower groups but does not support arbitrary limitations on grower groups.

### **Section 1: Applicability and Exemptions from Certification**

ASTA would like to address the NOP proposed requirement that "any handling operation whose activities may affect the organic status of agricultural products they handle or represent" include brokers of agricultural commodities, including spices.

ASTA agrees with the overarching principle that this proposed rule will strengthen organic enforcement by ensuring that all parties that are part of the supply chain become certified organic handlers. However, while the AMS includes in its proposed rule that those entities in the middle of the supply chain become certified organic handlers, including importers, distributors or traders, who must be certified because these entities *handle* organic products, ASTA questions the inclusion of brokers in this list of supply chain entities that would potentially be required to become certified organic handlers.

An importer or trader may physically take possession of an organic product, either by physical possession or in titular ownership, and therefore become a recorded entity or handler within the organic supply chain. ASTA would support that these entities, who take possession, and are therefore responsible for verifying the integrity of the organic product, become certified organic handlers. ASTA agrees with the expansion of the organic handler term to include these businesses in the term handler, and the requirement that these businesses become certified organic handlers.

Within the spice industry there are many brokers who do not take possession of any product and who will not appear anywhere on the supply chain. These brokers simply match up a seller of a product, and a buyer of a product, and are paid for their services. Brokers play an important part in the spice industry,

especially for farmers who may have small, specialty crops, who may be newer into the marketplace, or who may have a niche product for which there is very limited audience. The proposed rule recognizes in the preamble that storing, receiving, loading, and transporting activities are themselves low risk activities. This is the same type of low risk activity that brokers engage in. It is the buying and selling activities that rise to a level that is greater than low risk. If an activity presents a low risk of compromising organic integrity, then those who are undertaking it should not be required to become certified handlers. A commodity broker performs a low risk activity that does not involve buying, selling, verifying the organic status of a product, or taking physical or financial possession of a product, and should not be required to become a certified organic handler.

ASTA believes that requiring brokers who do not have any control over the quality or integrity of the product is unnecessary. As such, ASTA requests that the definition of organic handler should not include the term broker to reflect brokers who simply bring buyers and sellers together. These brokers should continue to be exempt from organic certification.

### **Section 3: Labeling of Nonretail Containers**

Section 3 proposes to “require that nonretail containers used to ship or store organic products are labeled with two additional pieces of information: (1) A statement identifying the product as organic; and (2) the name of the certifying agent...” This requirement would apply to all nonretail containers, including packaging such as totes, bulk containers or bags, or almost any type of nonretail container not associated with transportation. AMS specifically asks for comments regarding whether or not the certified operation must be listed on all nonretail container labels. While ASTA would support the traceability requirement in general that the certified operation be easily identifiable for all nonretail containers for traceability purposes, ASTA requests flexibility for how this information can be presented and disseminated, rather than a mandate that the information appear directly on all nonretail containers.

While ASTA supports the proposed additional traceability requirements within the organic supply chain that would require a certifier to be identified at each step, the mandatory labeling on nonretail containers of the certifier of a product would be onerous and difficult on certain packaging types. Spices and herbs are packaged in a variety of bulk packaging types for shipping, processing, and storage. While some forms of packaging lend themselves to on-package labels, certain forms of bulk packaging and storage containers, such as supersacks, are impractical to adhere on-package labeling. Additionally, the requirement to place the certifying agent on a nonretail container is not consistent from one certifier to another. Some companies insist on including the certifying body on each label as essential and required business practice, while some companies do not include this information at all and are not required by their certifier to include the certifying agent on the label. Rather than require the certifying body be included on all nonretail labels, ASTA would instead request flexibility for how companies can provide the necessary information of the organic certifier for each product by including this information on accompanying documentation rather than with mandatory on-packaging labeling of the nonretail container.

ASTA supports a requirement that the certifying body of a product accompany the product through the supply chain for traceability purposes. However, rather than requiring this information to appear on the nonretail product itself, ASTA requests that the certifier information may instead be provided on the type of documentation that typically accompanies organic products during transportation and storage,

such as bills of lading, COAs, etc. This would allow companies to provide the requested certifier information for every nonretail container, but in a manner that would allow flexibility. In the preamble of the proposed rule, AMS identifies documentation that typically accompanies products during transportation and storage,<sup>1</sup> which can also be used to provide information on traceability and fraud verification to organic certifiers for nonretail containers. ASTA requests that the final rule recognize that the use of these records be allowed to fulfill the requirement to identify the certifier and the certified operation in lieu of on package labeling where it is not feasible or practical.

In its comments, the Organic Trade Association (OTA) “supports mandatory identification of the certifier and the certified operation on nonretail containers, but also supports flexibility for organic operations in labeling of nonretail containers with the mandatory information in a manner that is adaptable to the wide variety of nonretail containers while still ensuring that the information is immediately accessible. Additional guidance should be developed to support common understanding and consistent implementation of this requirement.” ASTA supports the OTA position.

### **Section 16: Grower Group Operations**

AMS includes in the proposed rule additional regulations for grower group operations. AMS points out in the proposed rule that spices are one commodity that can be certified organic through grower groups, and the existence and availability of these groups is an important part of the spice supply chain. The proposed rule would establish new standards for grower group certification eligibility criteria, including an Internal Control System (ICS) requirement. ASTA supports the ICS requirements in order to strengthen organic enforcement and deter and combat organic fraud.

AMS seeks comments in the proposed rule regarding limits on gross sales, field size, maximum numbers of members, or geographical limits of grower groups. While ASTA supports the proposed rules affecting grower groups as written, which do not place limits on size or scale of grower groups or group members, ASTA would not support any limits on grower groups for organic certification. The OTA comments support scale-neutrality regarding the size of groups and group members, and sees no need for more specific limits to further define geographic proximity. ASTA supports both positions as stated by the OTA.

ASTA agrees with the OTA that there is no need to limit the geographic proximity, or the size of the groups, or the acreage of crops grown under this rule. For example, not all spices and herbs are grown the same way. Depending on the crop, there could be few farmers but many acres of crops, or there could be many farmers with fewer acres of crops, such as cinnamon. The variety is such that it is unnecessary and impractical to place arbitrary limits on a grower group. ASTA supports the continued establishment of organic certification of grower groups and the establishment of the ICS in order to strengthen organic enforcement and combat fraud when it comes to grower group arrangements.

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<sup>1</sup> National Organic Program, Strengthening Organic Enforcement, 85 Fed. Reg. 47536 (August 5, 2020), at 45774. “As a best practice, records covering these types of handling activities should...verify both the quantities and the organic status of the product being transported and/or stored. Records could include....bills of lading, manifests, transaction certificates, shipping records, delivery records, invoices, lot numbers, and other audit trail documents... Records can also be used for traceability, both by certified operations to verify the source of a product they receive, and by certifying agents to verify the origin of a product during a trace-back audit.”

## Conclusion

ASTA is committed to combatting fraud in the spice industry, and specifically in the organic spice industry. Overall, ASTA strongly supports the AMS proposed rule on Strengthening Organic Enforcement. Specifically, ASTA requests only that AMS continue to exempt brokers from the definition of organic handlers, as these entities do not have possession or ownership of the product and do not appear in the spice supply chain. ASTA also supports the requirement that nonretail containers be labeled as organic and that the certifying agency accompany the nonretail container as long as that information can be disseminated with flexibility and may be included in accompanying documentation. Finally, ASTA supports the proposed rule and requirements to combat fraud for grower groups, so long as those requirements do not place arbitrary limits on the size, acreage or geographical proximity of a grower group.

Please feel free to contact me with any comments, questions or follow up that you may have.

Sincerely,

A handwritten signature in cursive script, reading "Laura Shumow", followed by a horizontal line extending to the right.

Laura Shumow  
ASTA Executive Director