Organic Import Oversight:
Collaboration Opportunities and Technology Needs Assessment

The U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) National Organic Program (NOP) is responsible for ensuring the integrity of the USDA organic seal. Rapid organic growth has increased the complexity of supply chains that carry organic products from farm to table. AMS continues to address new oversight challenges created by industry growth and increased market complexity.

This report responds to recommendations from the USDA Office of the Inspector General concerning the oversight of imported organic products. The report describes activities taken to date by AMS, the Department of Homeland Security (DHS) Customs and Border Protection (CBP), and the USDA Animal and Plant Health Inspection Service (APHIS). The report also identifies opportunities for future collaboration between these agencies, and presents a Needs Assessment for International Systems to better oversee organic trade.

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1.0 Introduction

1.1. Background and Purpose

The mission of the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) National Organic Program (NOP) is to protect the integrity of the USDA organic seal, both domestically and abroad, to maintain trust in the organic label. Rapid organic growth has increased the complexity of supply chains that carry organic products from farm to table. AMS continues to address new oversight challenges created by industry growth and increased market complexity.

The USDA organic regulations require all organic imports to be from certified operations. While USDA has found specific instances of fraud, the organic global control system of standards, certification, accreditation, and enforcement acts to protect the integrity of the organic market.

In September 2017, the USDA Office of the Inspector General (OIG) published a report evaluating AMS' controls over the approval and oversight of AMS international organic trade arrangements and the import of organic products into the United States. The OIG audit found that AMS needs to strengthen its controls over the approval and oversight of international trade arrangements and agreements for the import of organic products into the United States.

The OIG report included four findings with nine recommendations. AMS provided a response to the OIG, with a summary of planned actions. Table 1 summarizes both the OIG recommendations and the AMS response.

Table 1: September 2017 Office of Inspector General Report on Organic Trade: Recommendations and Agency Response

OIG Recommendation	AMS Response
Finding 1: Organic Standards' Equivalency Determination Process Was Not Fully Transparent	
1. Prior to issuance of future U.S. equivalence determination letters, develop and implement a procedure to document and disclose the final resolution of all foreign country organic standards identified as having differences from USDA organic standards.	• AMS agreed to develop and implement a procedure to document and disclose the final outcome of the variances from the side-by-side analysis of organic standards. This will assure interested parties and the public that all variances were resolved in a way that justifies the equivalence determination.
Finding 2: NOP Organic Import Documents Were Not Verified at U.S. Ports of Entry	
2. Execute a Memorandum of Understanding (MOU) between AMS and Customs and Border Protection (CBP) to obtain assistance from CBP	• CBP officials have told AMS they have limited capacity to take on additional responsibilities and no current authority to review organic imports or NOP import

OIG Recommendation	AMS Response
officials in reviewing National Organic Program (NOP) import certificates from countries with established equivalence arrangements at U.S. ports of entry.	certificates. AMS agreed to develop this report outlining how AMS and CBP could collaborate in these areas under existing authorities.
3. Request CBP to update the Automated Commercial Environment (ACE) system message sets to provide CBP officials with instructions for reviewing NOP import certificates at U.S. ports of entry and the actions to take if they are not found.	• NOP import certificates are only required for organic imports from the European Union, Switzerland, Korea, and Japan. AMS currently has an MOU with CBP that allows NOP limited access to ACE. AMS agreed to submit organic message set proposals to CBP and request that CBP implement organic message sets.
4. Develop and implement a plan to verify NOP import certificates at U.S. ports of entry, identify fraudulent import certificates, and capture organic import data.	• AMS agreed to prepare the needs assessment that appears in this report for an organic verification system that validates organic import certificates, identifies fraudulent certificates and captures data.
Finding 3: Controls Over Organic Products Fumigated at U.S. Ports of Entry Were Inadequate	
5. Execute an MOU between AMS and APHIS to ensure that APHIS officials notify NOP officials when imported agricultural products are treated with NOP-prohibited substances at U.S. ports of entry.	• In January 2017, AMS and APHIS executed an MOU to document collaborative efforts to identify imported organic shipments of agricultural products that, prior to importation into the United States, are treated for plant pests or are treated as a condition of entry.
6. Request CBP to update the ACE system message sets to ensure APHIS officials are notified of steps to take when organic agricultural imports are treated with NOP-prohibited substances at U.S. ports of entry.	• AMS agreed to work with APHIS to develop mechanisms within the APHIS Emergency Action Notification (EAN) system to identify, track, and ensure that treated organic products are not sold, labeled or represented as organic.
7. Develop and implement a plan for creating and implementing procedures for tracking organic products treated with NOP-prohibited substances at U.S. ports of entry and ensuring those products are not sold, labeled or represented as organic.	• AMS agreed to work with APHIS to establish procedures to notify importers and certifiers when organic products are treated and can no longer be sold, labeled, or represented as organic.

OIG Recommendation	AMS Response
Finding 4: Onsite Audits Not Conducted Timely	
8. Develop and implement performance measurements to collect, analyze, and report to management regarding the timeliness of onsite reviews for foreign countries that maintain a recognition agreement or equivalency arrangement with USDA.	• AMS already has a system to monitor audit frequency for accredited certifiers. AMS agreed to use its audit monitoring system to collect, analyze and report the timeliness of the onsite reviews AMS conducted of recognition or equivalence partners as a performance measurement.
9. Revise NOP Handbook NOP 2100 to include the requirement that NOP officials conduct onsite audits of foreign countries that maintain equivalency arrangements with USDA every 2 years.	• AMS agreed to revise its procedures to require NOP officials to conduct onsite audits of foreign countries that maintain equivalency arrangements every 2 years.

1.2. Document Purpose and Intended Audience

This report summarizes activities that respond to OIG Finding 2: NOP Organic Import Documents Were Not Verified at U.S. Ports of Entry; and Finding 3: Controls over Organic Products Fumigated at U.S. Ports of Entry Were Inadequate. Findings 1 and 4 are addressed through different documents.

Specifically, the report outlines activities taken to date by AMS, the Department of Homeland Security (DHS) Customs and Border Protection (CBP), and the USDA Animal and Plant Health Inspection Service (APHIS). The report also identifies opportunities for future collaboration between these agencies, and presents a Needs Assessment for International Systems to better oversee organic trade.

Key audiences for this report include:

- The USDA Office of Inspector General
- Government agency leaders and staff that contribute to organic oversight
- Organic certifiers and trade, including farms, businesses, and brokers that trade internationally
- Companies that may wish to support the development of an international organic traceability and verification system

This document assumes that the reader has a foundational understanding of the NOP mission, structure, and operating environment. For example, the document assumes pre-existing awareness of what an organic certifier is and does, and what it means to be a certified organic operation.

1.3. Overview: Current Organic Authorities and Oversight Mechanisms

All organic farms and businesses must be certified. Certification is demonstrated through an operation-level certificate issued by the organic certifier. The certificate does not expire unless the farm or business surrenders its certification or is suspended or revoked from certification. This section of the report discusses NOP's oversight authorities and known oversight gaps.

Statutory and Regulatory Authorities

The NOP is authorized by and operates under the Organic Foods Production Act of 1990, 7 U.S.C. §§ 6501-6522 (OFPA), and associated organic regulations, 7 C.F.R. §§ 205.1-205.699 (USDA organic regulations). NOP, which is charged with administering and supervising the program, has also promulgated a detailed National Organic Program Handbook: Guidance and Instructions for Accredited Certifying Agents and Certified Operations. The purpose of the OFPA is to assure consumers that organically produced products meet a consistent standard (7 U.S.C. § 6501(2)).

The Secretary of Agriculture was given authority to establish and oversee an organic certification program for producers and handlers of agricultural products that have been produced using organic methods (7 U.S.C. § 6503(a)). Additionally, the Secretary was authorized to implement a program to accredit governing State officials or private persons as certifying agents for the purpose of certifying production and handling operations as organic (7 U.S.C. § 6514).

It is difficult to distinguish conventionally produced agricultural products from organically produced agricultural products without records demonstrating compliance. As such, Congress authorized the Secretary to establish numerous recordkeeping and record production requirements for certified operations, certifiers, and all persons subject to the OFPA (S*ee* 7 U.S.C. §§ 6503, 6513, 6519, and 6521). The USDA organic regulations define "records" as any "information in *written, visual, or electronic form* that documents the activities undertaken by a producer, handler, or certifying agent to comply with the Act and regulations" (emphasis added).

Record Collection and Production Authority for Certified Operations and Certifiers

Both the OFPA and the USDA organic regulations require certified operations to maintain and make available to the Secretary records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as organic (*See* 7 U.S.C. § 6519, 7 C.F.R. § 205.103, and 7 C.F.R. § 205.400(d)). Certified operations' records must include records that are adapted to the particular business that the certified operation is conducting, fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited, and sufficient to demonstrate compliance with the OFPA and the USDA organic regulations (7 C.F.R. § 205.103(b)). These records must be sufficient to provide an "audit trail" to determine the source, transfer of ownership, and transportation of any agricultural product labeled as organic (7 C.F.R. § 205.2)

Additionally, 7 C.F.R. § 205.201 requires certified operations to create organic production and handling system plans that must include a description of the recordkeeping system implemented

to comply with the OFPA and the USDA organic regulations, and additional information deemed necessary by the certifying agent to evaluate compliance with the USDA organic regulations.

Likewise, both the OFPA and the USDA organic regulations require certifiers to maintain and make available to the Secretary records concerning its activities (*See* 7 U.S.C. § 6519, 7 C.F.R. § 205.501(a)(9), 7 C.F.R. § 205.510(b)). Additionally, as a condition of their accreditation, certifiers must "comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary." (7 C.F.R. § 205.501(a)(21).

Background on Organic Imports

Organic products move across complex supply chains around the world. Certified organic businesses are overseen by certifiers, who conduct regular inspections of the farm or business. As organic product changes hands, the receiving business is responsible for confirming the organic certification of the business from which it receives that product.

For products crossing the border into the U.S., the exporting entity often also generates transaction certificates, which verifies the organic status of the shipments. These are approved by the organic certifier overseeing the business responsible for the product. These transaction certificates, however, are neither standardized nor required under the USDA organic regulations, and may not be required by the specific importer receiving the product in the U.S.

For imports coming from countries or regions with which the U.S. has an equivalency arrangement (Canada, European Union, Switzerland, Japan, and Korea), each import must be accompanied by an "NOP Import Certificate," an Office of Management and Budget (OMB)-approved form that is generally completed by the exporter and approved by the certifier responsible for certifying the business shipping to the U.S.

NOP does not currently explicitly require import certificates for imports coming from countries with which the U.S. does not hold equivalency. However, nothing in OFPA precludes this from being implemented in the USDA organic regulations. In addition to the abundant authority described above that allows the Secretary to require import certificates, OFPA also provides the Secretary with broad authority to establish appropriate and adequate enforcement procedures and any other requirements that the Secretary may determine to be necessary (*See* 7 U.S.C. § 6506). This broad authority coupled with the existing statutory and regulatory authority to require and maintain auditable records provides the Secretary the legal authority necessary to require the production of import certificates.

Organic Enforcement

A core challenge in organic enforcement and import oversight is that organic certification is done at the business-level, not the product-level. As such, the current enforcement provisions are focused on taking action against a non-compliant business, rather than blocking the sale of a particular product as organic.

- NOP and its certifiers have the authority to deny, suspend, or revoke organic certification or accreditation. When a certified organic business receives a proposed adverse action

(such as a proposed suspension or revocation), the business may appeal the adverse action to the AMS Administrator. If the adverse action is upheld by the Administrator, the business can request a Hearing before an Administrative Law Judge, and then appeal to the USDA Judicial Officer. The organic business maintains certification throughout this process, which can take up to 1-2 years.

- When an uncertified organic business (like a broker or other uncertified organic handler) engages in demonstrated fraud, NOP has historically issued a Cease and Desist Notice, which notifies the business of the violation and warns them to stop selling as organic. Unfortunately, it is not clear under OFPA that NOP has the authority to enforce a Cease and Desist Order. As such, NOP has generally pursued civil penalties through settlement agreements, which are set in the USDA organic regulations. These limitations illustrate the difficulty that NOP currently has to enforce against uncertified operations.

Currently, an importer can make the business decision to refuse a product that it believes to be non-compliant, however, there may be business-related legal and contractual barriers that discourage this. Right now, as long as the importer can demonstrate that it checked the organic certification status of the business immediately before them in the supply chain, it can show due diligence to accept that product and sell it as organic. Only hold-intact, stop-sale, or conditional release/provisional entry authorities would allow the holding/blocking of suspect product – this would require very rapid investigation and due process mechanisms that are not currently in place.

Known Oversight Gaps Related to Imports

This section summarizes known gaps in the current system of organic oversight of imports.

First, while NOP has the authority to require import certificates under OFPA, world-wide import certificate collection is not currently part of the USDA organic regulations. The NOP is currently working on rulemaking that will propose the requirement for organic import certificates for all imports from all countries.

Second, even if a requirement for import certificates were implemented, this would not provide the authority to oversee products at U.S. ports directly, or to block product from entering the country. AMS does not currently have the regulatory authority to establish and implement specific controls on organic products at U.S. ports of entry. As such, there is no current mechanism to consistently discover or block incoming fraudulent organic shipments.

The current statute prohibits the sale of products that violate the statute and regulations as organic, but does not clearly provide AMS with the authority to stop sale, hold product, or recall products in the marketplace or at the borders. To manage this challenge, if there is sufficient information that fraudulent product has entered the U.S., and if enough is known about the destination of these products, the NOP sends letters to the trade warning them of the concern and reminding them of the penalties associated with representing non-organic product as organic.

Third, organic products are often traded through brokers and handlers who do not touch the organic product, and are currently not required to be certified. In these cases, the uncertified

broker or handler receives the import documents for a product, which may or may not include an organic certificate, and passes it along to the next step in the chain. While the final importer of the product is responsible for obtaining an organic certificate from the last handler, the current oversight system does not require traceability back to the farm. The NOP is currently working on rulemaking to eliminate the allowance for uncertified brokers and handlers, and to require full traceability back to the farm at any point in the supply chain.

Finally, NOP's inability to swiftly enforce Cease and Desist Notices and civil penalty collections, as well as the existing lengthy enforcement and appeals process, is not a strong deterrent for those wishing to engage in fraudulent activities. Stronger and swifter enforcement actions are needed to protect the market.

1.4. Criteria for Evaluating Future Solutions

It is clear that the global control system could benefit from more oversight and additional control systems. AMS agrees with the OIG finding that direct controls for organic products are not currently in place at U.S. ports of entry; however, AMS does not currently have the regulatory authority to establish and implement specific controls at the ports themselves.

This reality highlights the need to establish clear criteria for evaluating future solutions for improving the oversight of organic products. These criteria are listed here:

- **Legal and Regulatory Authority**: Any solutions for improving the oversight of organic products must be within AMS' or other agencies' statutory authorities, and allowed for under the regulations. AMS is currently working on a Strengthening Organic Enforcement Proposed Rule, which is intended to modify the USDA organic regulations to improve critical oversight practices. However, AMS will not be able to implement requirements not provided for under OFPA.

- **Resources and Feasibility.** Any solution must be both technically and administratively feasible, and must be able to be implemented based on existing or realistically projected resources. For example, neither CBP nor NOP currently have the resources to monitor all organic shipments crossing the border, nor would it be technically or administratively possible to do so without significantly hampering trade. Any solutions must be feasible to implement given a reasonable assessment of resources.

- **Cost.** Separate from the resources required for Federal agency oversight, solutions for improving the oversight of organic products should not create unreasonable financial burdens for organic businesses and importers.

2.0 Import Oversight: Collaboration with CBP

In its September 2017 Organic Trade Oversight Report, the OIG made a number of recommendations related to protecting the integrity of organic imports at U.S. ports of entry. Implementing changes based on these recommendations requires collaboration with CBP, which is the lead agency with authority at the border. This section provides an overview of the key

stakeholders involved in this work, actions taken to date, and opportunities for future collaboration.

2.1. Overview of Key Stakeholders and Current Setting

CBP is the agency with the most direct responsibility for enforcing trade laws against counterfeit, unsafe, and fraudulently entered goods. The agency reports that "on a typical day, CBP welcomes nearly one million visitors, screens more than 67,000 cargo containers, arrests more than 1,100 individuals, and seizes nearly 6 tons of illicit drugs. Annually, CBP facilitates an average of more than $3 trillion in legitimate trade while enforcing U.S. trade laws." (Source: https://www.cbp.gov/about).

Overview of the Automated Commercial Environment (ACE)

To assist its mission, CBP operates a system called the Automated Commercial Environment (ACE). ACE is "the primary system through which the trade community reports imports and the government determines admissibility of products." In short, ACE processes import documents for almost all products entering the U.S., including organic products.

Currently, however, any exchanges of organic certificates (at the operation or transaction level) are independent of other import filing requirements. The ACE system does not currently identify or flag specific import shipments as containing organic products.

Systematically flagging products or shipments as organic would require the integration of NOP's organic import certificate into the ACE system in the form of a "message set." A message set is the data that allows the ACE system to accept and store specific information about a shipment with specific characteristics – such as evidence of products as being certified organic. The "organic message set" is central to the proposed future collaboration between AMS and CBP, and it is discussed further below.

CBP Import Notification Levels and Hold Authorities

As a shipment of product makes its way to the U.S., CBP can receive up to three different levels of notification, depending on the product's characteristics. Each level contains a different level of detail about the shipment:

(1) **Advance Data Manifest: National Security Check** (Level of Detail: General product category – e.g., cheese, 10 boxes). This data is not at a sufficient level of detail to be useful for supporting NOP oversight. CBP also requires an Import Security Filing (ISF) 24-hours *prior* to arrival for inbound containerized ocean shipments.

(2) **Customs Release Entry Form (Form 3461)** – Includes Harmonized Tariff Schedule (HTS) codes for product and its origin. (Level of Detail: Product type – e.g., parmesan cheese, 10 boxes.) This package generally arrives 10 days *after* shipments arrive in the U.S.

(3) **Entry Summary Form (Form 7501)** – Information package containing marketing data and information. (Level of Detail: Product type – e.g., parmesan cheese in wheels from Region Y.) This package generally arrives 30 days *after* shipment delivery in the U.S.

In addition to receiving this incoming information, CBP can take different actions with an imported product based on a specific agency's legal authorities. For example, CBP can:

- Require explicit agency approval before releasing an import ("Hold Intact" authority). This would prevent the shipment from entering commerce until approved by the governing agency. As such, the agency needs information about the shipment as early as possible (Advance Data Manifest stage) to be able to adjudicate it before arrival.

  Early discussion with CBP suggests that adjudicating organic imports at the port is not an option, because OFPA does not currently provide the appropriate authorities, and the resources and cost to facilitate that adjudication are a prohibitive barrier.

- Implement "Post-Release" or 'Conditional Release" authority, which allows the import into the U.S., but also allows the agency and its supply chain partners to adjudicate the shipment after it passes through a U.S. port of entry. In this scenario, information from the Entry Summary Form (Form 7501) is often sufficient and the most appropriate, as it contains the marketing information needed to effectively review the validity of the product. If a problem is found with the shipment, the agency can then notify the supply chain and take enforcement action as needed.

  Early discussion with CBP suggests that this is best option for NOP to pursue at this time. It would require certifiers to have access to ACE organic message set data to verify organic integrity throughout the supply chain.

Case Study: AMS Specialty Crops Marketing Orders Agreement Division

The AMS Marketing Orders Agreements Division (MOAD) is another AMS program that has established an electronic reporting connection with the CBP ACE system. Before MOAD-regulated products reach a U.S. point of entry, importers enter information into ACE. MOAD has an internal system (the Compliance Enforcement Management System or CEMS) that receives and processes this information from ACE.

Once MOAD certifies a product as meeting import requirements, inspection staff transmit an inspection's "pass/fail" outcome back to CEMS. If all import requirements have been met, CEMS transmits a "May Proceed" message back to ACE. If requirements have not been satisfied, CEMS automatically assigns the case to AMS personnel for follow up.

One possibility would be to have NOP and its certifiers receive data about organic products from ACE by building a new module in CEMS, and then adjudicating under "post-release" or "conditional release" authority, with the ability to alert trade to fraudulent or fumigated product if it is detected.

Harmonized Tariff Schedule (HTS) Codes

HTS codes are important numerical sequences for identifying specific commodities imported into the U.S. for trade purposes. Very few HTS codes for organic commodities exist, further complicating the ability to track organic product as it crosses the border.

AMS has considered two alternatives to address this: (1) adding a chapter in the HTS specifically for organic products (would add a prefix to the code); (2) adding an organic qualifier (suffix) to existing HTS codes to identify product as organic. This would add two digits to all existing eight digit codes to further identify a product as organic.

Ultimately, AMS decided that neither of these high-level changes to the HTS were feasible, as the majority of organic products do not meet the minimum requirements set by the U.S. International Trade Commission to add more organic codes. Additionally, importers are only required to identify cargo at a six or eight digit level (not the ten digits needed to code a product as organic). This analysis process is what led AMS to conclude that the "organic message set," introduced above and discussed further below, is the best possible alternative for identifying product as organic across all categories, rather than pursuing additional HTS codes.

2.2. Summary of Actions: 2017-2018

AMS has engaged in three primary activities in collaborative action involving CBP.

Targeted Investigations of Imported Grains

Based on emerging concerns about organic fraud, as well as other rules restricting the import of specific commodities from specific countries, CBP have increased their targeting of grains coming to the U.S. from specific countries of concern in Eastern Europe. When shipments appear to involve organic grains and oilseeds, NOP has requested documentation from the organic certifiers involved and has provided that information to CBP through APHIS.

As a result of these investigations, CBP has blocked at least three shipments with product labeled as organic from entering the United States – including a shipment of chickpeas and about 39 thousand metric tons of corn, valued at approximately $14.5-million dollars.

Organic Message Set Development

As mentioned above, introducing an "organic message set" within the ACE system would facilitate the identification of product as organic in CBP systems. To initiate this process, between March and September 2017, AMS developed the documentation required to propose an organic message set to CBP and its governing body, the Border Interagency Executive Council (BIEC).

AMS formally presented its organic message set "request for development" to CBP in April 2018. The responsible Steering Committee prioritized the request, and CBP provided a cost estimate to AMS in July 2018.

Joint Collaboration Session: CBP, APHIS, AMS

In February 2018, senior leaders from several offices in CBP, APHIS, and AMS met to outline potential areas for collaboration to implement the OIG's recommendations related to organic trade oversight. Many of the insights provided during that meeting are reflected in this report. AMS will continue to meet with CBP and APHIS staff as work proceeds.

2.3. Opportunities for Future Collaboration with CBP

There are both near-term and long-term collaboration opportunities between AMS and CBP.

ACE Data Access

To access import-related data in ACE, including information about specific shipments possibly including organic products, agencies must have a Memorandum of Understanding (MOU) with CBP. AMS has an existing MOU with CBP, but the document requires updates to allow NOP access to Entry Summary Form (Form 7501) and Customs Release Entry Form (Form 3461) information for shipments associated with all pertinent HTS chapters (e.g., all chapters that include products that could be represented or sold as organic under OFPA). AMS plans to collaborate with CBP to update the current MOU.

If CBP takes on additional roles for monitoring organic products once the organic message set is developed and implemented, the MOU will need to be updated with the associated roles and responsibilities as well.

Organic Message Set Development and Deployment

As noted above, AMS formally presented its organic message set "request for development" to CBP in April 2018. CBP provided a cost estimate to AMS in July 2018. For the next steps, AMS will need CBP's support to:

- Coordinate OMB approval for information collection through the organic message set.
- Facilitate completion of an Inter-Agency Agreement (IAA) to transfer funds from AMS to CBP to initiate a development task order/contract.
- Lead development of the organic message set on behalf of AMS.

Explore "Post-Release" Process for Organic Shipments

Early conversations with CBP suggests that the "Post-Release" adjudication process may be most appropriate for NOP given its authorities and resources. As such, future collaboration will involve articulating the Concept of Operations that would be associated with implementing this process. This would not be implemented until after the programming of the organic message sets is complete.

3.0 Fumigation Oversight: Collaboration with APHIS

In its September 2017 Organic Trade Oversight Report, the OIG also made a number of recommendations to improve controls over organic products that are fumigated at U.S. ports of entry. Implementing changes based on these recommendations primarily requires collaboration with APHIS, which leads fumigation activities at the border. This section provides an overview of the key stakeholders involved in this work, actions taken to date, and opportunities for future collaboration.

3.1. Overview of Key Stakeholders and Current Setting

Working closely with CBP, APHIS is the lead agency for making sure that agricultural products crossing U.S. borders are free from regulated pests and diseases. All fumigants (e.g., methyl bromide, aluminum phosphide, magnesium phosphide) are prohibited substances under the USDA organic regulations. Therefore, products that are fumigated cannot be represented or sold as organic.

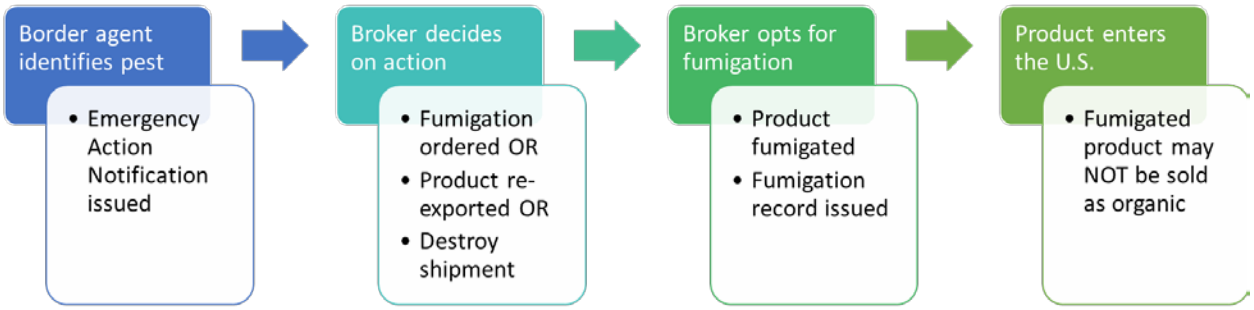
The NOP does not currently have the authority to directly prohibit a fumigated product from entering the U.S. or the stream of commerce as non-organic, as the products do not pose a risk to human or plant health. As such, collaboration between NOP and APHIS is important in notifying both certifiers and trade when fumigation has occurred, so that businesses in the supply chain can take appropriate actions to avoid labeling fumigated product as organic.

Fumigation Requirements and Process

The U.S. requires fumigation for numerous fruits and vegetables as a "condition of entry." In other words, certain products from certain countries will be fumigated prior to entering the U.S. 100% of the time. "Condition of entry" fumigation is required for phytosanitary purposes – specifically, to prevent harmful plant pests and diseases from entering the United States.

Other products may be fumigated on an ad hoc basis, if a visual inspection at a port of entry shows the presence of an APHIS regulated pest or disease. These pests and diseases may be present in the product, or on packaging or transport vehicles.

Figure 1: Summary of Fumigation Process



Here is a case study with the steps involved when fumigation occurs:

(1) **Case Study**: A fruit shipment arrives in Florida. APHIS may be alerted to the incoming shipment based on HTS codes and APHIS message sets in the CBP ACE system.
(2) CBP conducts a risk-based inspection of the container and finds a pest that could harm Florida orchards.
(3) The shipment must be treated (fumigated) to enter Florida.
(4) The broker or importer identified in ACE is notified of the pest detection, through the use of an Emergency Action Notification (EAN) form (PPQ Form 523). APHIS has asked CBP to update the EAN form to state that products fumigated with prohibited substances no longer comply with OFPA requirements and may not be sold as organic. If this is completed, any broker or importer receiving the form would have received written notification that fumigated product is not eligible for sale as organic.
(5) Once they have received the EAN, the broker or importer has three options: (a) accept the fumigation and sell the fruit as non-organic; (b) re-export shipment to a place where the pest poses no risk; or (c) destroy the shipment.
(6) If fumigation is selected, then PPQ or CBP oversees the treatment and submits the Fumigation Notification form (PPQ Form 429) to APHIS. This notification responds to and closes out the EAN. The data from any Form 429 linked to product originally identified as organic by APHIS is available to the NOP.

Fumigation presents unique challenges to organic oversight, since the supply chain may include brokers and traders who do not physically handle organic products - and who are excluded from certification requirements. As such, if an uncertified broker or importer receives an EAN form or Fumigation Record, they are not directly accountable to organic certifiers. Moreover, uncertified brokers might not share Fumigation Records with certified importers. This reflects a potential risk in the organic oversight system.

3.2. Summary of Actions: 2017-2018

NOP and APHIS have taken a number of collaborative steps over the past year to decrease the risk that fumigated products entering the U.S. are sold as organic. This section summarizes these activities.

Training for Organic Certifiers: Accessing Fumigation Rules

In February 2018, APHIS staff conducted face-to-face training with more than 150 people from organic certifier organizations. The goal of the training was to teach certifiers how to identify commodities that are always fumigated as a condition of entry to the U.S. or that may be fumigated based on visual detections of pests. During the training, APHIS staff helped certifiers understand how to access fumigation rules for different commodities and countries. The NOP complemented APHIS' training by providing certifiers with sample questions for inspections and reviews of organic importers. NOP is also reviewing its audit checklists to ensure that certifiers are asking for the necessary information from their certified brokers.

Training for APHIS Staff: Recognizing Organic Products

In June 2017, NOP launched a self-guided training module for APHIS' Plant Protection and Quarantine (PPQ) and CBP Agriculture Specialists. The goal of the training was to help Agriculture Specialists who oversee fumigation to better identify organic imports, and record them as organic for NOP notification purposes. The training includes a one-page reference guide as a job aid. The recorded training was accessed more than 200 times between June 2017 and May 2018.

Fumigation Notifications

In January 2017, AMS and APHIS executed an MOU to document collaborative efforts to identify imported organic shipments of agricultural products that, prior to importation into the United States, are treated for plant pests or are treated as a condition of entry. APHIS personnel now have resources available to help them identify products as organic when the label or document indicates such a designation. Because of this, the NOP can now run reports and query data directly from APHIS' fumigation database (from the "PPQ form 429" described above) to identify and analyze fumigated shipments.

NOP is now able to analyze APHIS fumigation notification data for products identified as organic by APHIS. For some notifications, NOP has been able to identify the certified organic handler and certifier associated with the transaction, and has requested targeted investigations by the certifier or the State Organic Program to confirm that the fumigated product was not sold as organic.

For other shipments, NOP has not been able to connect the transaction to a certified organic operation. This is because APHIS system from which the fumigation reports are generated was not built or designed to capture certain organic data that NOP needs to connect the transaction to a certified organic operation. In addition, the few existing HTS codes for organic commodities and a lack of access to conventional trade data limit the NOP's ability to analyze incoming products. As such, it is rare that NOP can identify the consignees, company name, certifier, or final disposition of fumigated organic shipments.

The lack of HTS codes for most organic commodities, as well as NOP's current lack of access to conventional/non-organic HTS codes, prevents NOP from cross-referencing fumigations with specific entries in ACE. In a few cases, NOP has found sufficient information to initiate an investigation. However, in some of those cases, the investigation showed the product had been incorrectly coded as organic and was always intended to be sold as conventional.

To maximize its resource investment, NOP has moved to a risk-based approach to processing the fumigation notices. This involves identifying common and specific commodity-country combinations that are consistently fumigated as a condition of entry (e.g., asparagus from Peru, blueberries from Chile). The next step, then, is to notify both certifiers and trade of these combinations to help focus their investigations and preventative actions.

3.3. Opportunities for Future Collaboration with APHIS

There are a number of opportunities for future collaboration between AMS and APHIS to prevent fumigated product from being sold as organic in the U.S. This work will primarily build upon the ongoing analysis of APHIS data to improve training and timely notifications of fumigation for organic certifiers and the organic trade.

Ongoing Training and Instruction for Certifiers

The APHIS fumigation rules are complex. They are found in different databases and manuals, and they vary based on commodity groups, origin country, and/or the U.S. destination port of entry. NOP plans to collaborate with APHIS to expand training for certifiers on how to search the APHIS information systematically to more effectively oversee organic products that may be treated before entry into the U.S.

NOP has also published policy documents for organic certifiers and organic trade on accessing APHIS fumigation rules. These reaffirm that certifiers need to ensure that organic businesses have procedures in place to ensure that fumigated ad prohibited products are not sold as organic in the U.S. These policy memos, which expand on an AMS Notice to Trade from July 2016, are published in the NOP Handbook, and signal the importance of this topic to certifiers and the trade.

Introduce Notifications to Trade

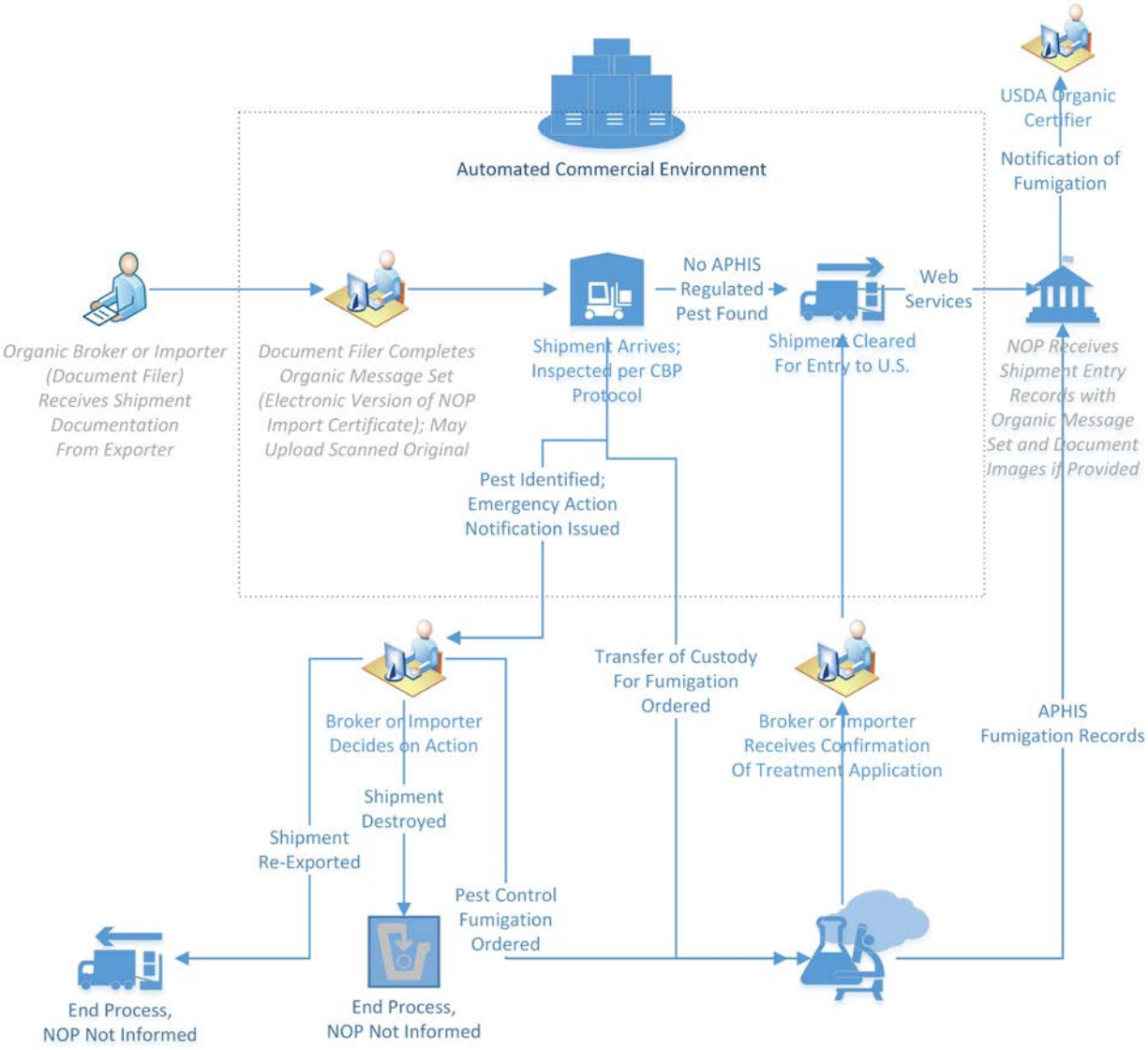
Based on its analysis of fumigation patterns over the past several months, NOP is working towards completing notifications for certifiers and industry about fumigation "hot spots" on a regular basis when new trends are seen (e.g., regular fumigation of blueberries from Chile). NOP and the AMS Fair Trade Practices Program have also issued a joint letter on fumigation to licensees under the Perishable Agricultural Commodities Act (PACA) and to major specialty crop importers in the U.S.

Enhance Fumigation Feedback Mechanisms to ACE

Once the APHIS Fumigation Notification (PPQ Form 429) is complete, there is currently no feedback into the ACE system. APHIS has reported that the EAN form (PPQ Form 523) may capture bill of lading, entry numbers and other means of identification for APHIS and CBP regulatory and business purposes. Unfortunately, they often cannot be cross-referenced against CBP Entry Numbers. As a first step, Entry and Line Numbers (by HTS Code and possibly message set number) from ACE are needed in this section of the EAN.

Once organic message sets are programmed into ACE, it will be important for any fumigation notification information to be fed back into ACE by CBP and/or APHIS, so that NOP and importers are aware of the product's change in organic status. This collaboration would require changes by both CBP and APHIS. CBP would need to adopt changes already made by APHIS to their EAN, which now includes a statement about the impact of fumigation on organic labeling, and APHIS would need to include information on the EAN form that maps back to the ACE system as described above.

Figure 2: Information and Document Flow for Organic Fumigation Feedback Mechanisms into ACE



4.0 International Systems Needs Assessment

The OIG's September 2017 report on the oversight of organic imports recommended that AMS engage in further systems modernization work to address international trade tracking and enforcement. This additional modernization is needed to address emerging and evolving challenges created by the rapidly expanding international market for organic goods, and the growing need to monitor and enforce supply chain integrity. This section presents a high-level Needs Assessment for this work.

4.1. "As-Is" Description: Existing Technology Investments and Resources

AMS has already invested significant effort and resources into technology resources to facilitate organic oversight. This section outlines the existing technology landscape that additional systems development work would extend.

Organic Integrity Database

In September 2017, the NOP successfully completed its development of the Organic Integrity Database. The Organic Integrity Database is a modernized database of certified operations, which can be updated at any time by organic certifiers. The public can search the database using a variety of search terms to identify the certification status of any organic operations, and to identify possible supply chain connections based on location and products. Publically-available Application Programming Interfaces (API) are available for those wishing to consume data from Integrity on a regular basis.

Two key features of Integrity have been shown to be particularly useful when interfacing with other systems:

- USDA uses a common security module called "eAuthentication," which provides user credentials for system use. Any component of a future system that uses USDA resources should allow certifiers and trade to use the same authentication account across USDA systems.

- The Organic Integrity Database includes a unique ten-digit identifier for each individual certified organic operation. The first three digits of the identifier designate the certifier with oversight over the operation. This standardized identification approach facilitates data transfer and certifier identification across systems, so that data can be pulled from Integrity as long as the ten-digit code is known.

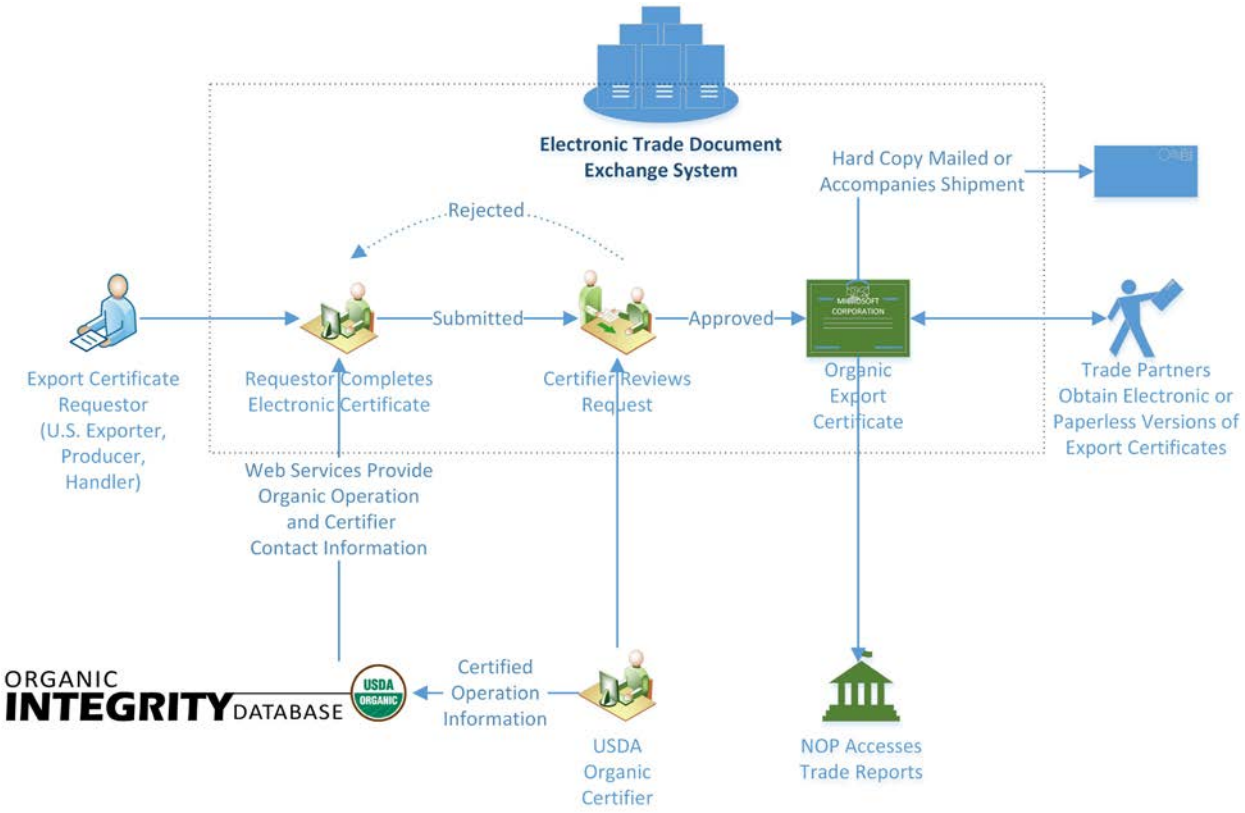
U.S. Export Management and Reporting

AMS has also already invested in other trade management systems. The first is the AMS Electronic Trade Document Exchange (eTDE) system for export certificate management. NOP has programmed a number of existing export certificates into the eTDE system as an option for organic traders in the U.S. wanting to market their products to other countries. The NOP modules in eTDE accept data from the Organic Integrity Database, and the user registration and authentication process mirrors that of the Organic Integrity Database.

The second AMS trade-related system is the Compliance Enforcement Management System (CEMS) which exchanges information with ACE about the status of imports under the AMS Marketing Orders agreements.

Either of these tools, eTDE and/or CEMS, could become government-side modules in a global traceability system for organic oversight.

Figure 3: Information and Document Flow for Electronic Export Certificates in eTDE



APHIS ePhyto Hub

AMS has also met with the APHIS PPQ team responsible for the international "ePhyto Hub," a paperless, global, digital exchange for electronic phytosanitary certificates. The PPQ ePhyto group is working with the ePhyto Steering Group of the International Plant Protection Convention (IPPC). The IPPC is an international plant health agreement with 183 participating countries, including the United States.

The ePhyto Hub allows countries to exchange certificates between computerized trade systems in individual countries. Participating countries share a common technical vocabulary and a set of established trade rules. This allows them to interconnect through the global ePhyto Hub, where they can exchange electronic phytosanitary certificates with many other countries quickly, accurately, and at very low cost. In addition to the global ePhyto Hub, the ePhyto project includes a generic national ePhyto system that can be deployed by developing and low trade volume countries. This ensures access into the global network for certificate exchange.

The ePhyto project is of interest to NOP not only because of its technology infrastructure, but also because of its governance model. The U.S. participates as a member of a global Steering Committee that governs activities across countries. The ePhyto Hub data is housed on United

Nations cloud infrastructure, making it truly an internationally-governed system. This provides an interesting benchmark for NOP, given the international nature of the organic control system.

4.2. Goals and Success Factors for an International System

USDA is currently considering foundational needs and requirements that would drive the development and implementation of an industry-administered supply chain traceability and import oversight system.

Goals for such as system are as follows:

- Facilitate full organic supply chain traceability from farm to market and back, across multiple handlers and across multiple organic certifiers.
- Allow governing entities, such as organic certifiers and the USDA, to quickly access and both approve and verify (check) that organic certificates and transactions are valid.
- Implement organic oversight control systems that are electronically-based and secure, with verified trusted users and secure authenticated data and records exchange.

Criteria for a successful system development effort are as follows:

- Use existing Federal trade systems as modules for transactions governed at the border (e.g., import and export certificates).
- Build on technology and data investments provided by the Organic Integrity Database.
- Emphasize distributed industry use and oversight, consistent with the public-private model of organic certification, while also allowing Federal and certifier appropriate levels of access for approval and verification activities.
- Maximize adoption by providing mechanisms that allow for multiple tiers of information for different users/purposes, and the ability to interface and feed data to/from Federal trade systems and corporate supply chain management systems.

The ultimate goal is to develop technologies that would allow, and even require, certifiers to approve transactions along an organic supply chain in real-time, enabling them to detect falsification of documentation and inventory counts across that supply chain. A comprehensive system would allow the NOP to audit across the supply chain, fulfilling the goal of tracing product from farm to market and back.

4.3. Towards an International Organic Traceability and Oversight System

There has been significant discussion about the need for an international system to improve the traceability and oversight of organic supply chains. The governance, architecture, and business requirements for such a system have not yet been defined. A high-level summary of needs is described here to facilitate an evaluation of alternative approaches and technologies. The NOP welcomes input and feedback from the organic trade and from system developers to further advance this project.

Defining System Needs: Refining Scope

Often, identifying what a new system will NOT do helps in establishing the project's charter and scope. The following bullets summarize core functions that are NOT expected to be part of this system.

- The system may feed data into government import systems, but will NOT become an import system of record. The CBP ACE system is envisioned as the system of record for organic imports data, as it is already used for import tracking. NOPs first priority is investing in organic message sets in the ACE system that will facilitate the identification of imports as organic. Any international system for tracking and overseeing organic supply chains would likely interface with ACE, but will not replace it.

- NOP does not envision developing or deploying a system to replace existing supply chain management systems. Data may be exchanged between the system and existing corporate supply chain systems, but will not replace full supply chain management software.

- The NOP does not currently advocate developing an organic tracking system for U.S. domestic organic transactions. The focus of this system would be on tracking imports on their way to the U.S. Once the product is in the U.S., the domestic organic control system would provide sufficient traceability and oversight.

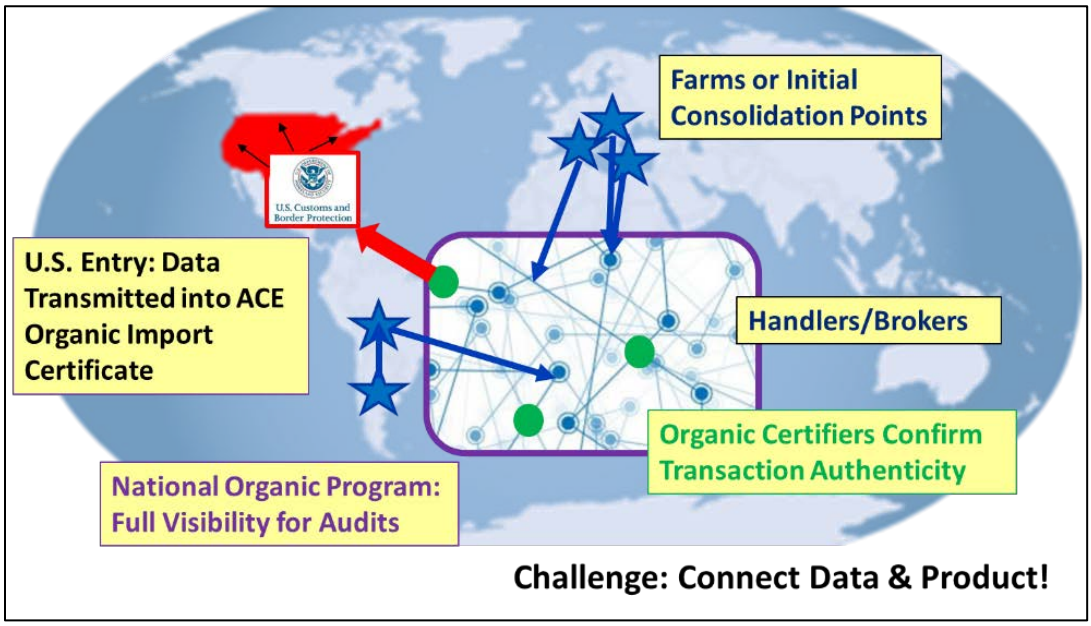
- Based on legal, technical, and administrative constraints, the NOP does not believe that a centralized federated system to store organic transaction data is an appropriate solution. The NOP could act as a neutral stakeholder to guide and facilitate a governance model and technical architecture for a trade-run system. NOP could also envision operating an oversight node or module within a system, or having access to a cloud-based system administered by the trade itself. However, a master organic data warehouse on federal servers is likely not a viable alternative.

Conceptual Model: A Network of Organic Stakeholders

It has been suggested that creating a full electronic record of transactions from the point of U.S. import back to the place of production would be a good application of distributed ledger system technologies, such as a Blockchain. The NOP is open to this option, and is interested in viable strategies that address both the governance (participants, rules, workflows) and technology associated with such a system.

Informed by the goals, success factors, and constraints above, Figure 1 shows a conceptual model for an international organic traceability and oversight system.

Figure 4: Conceptual Model for an International Organic Supply Chain Traceability and Oversight System



In this model, data about organic product would enter the system (or network or Blockchain) either at the farm or at the initial consolidation point if organic products are coming from multiple small farms to an initial collection point. Ensuring the integrity of the organic at this entry point would be critical: Is the farm certified organic and in good standing with its certifier? Can its acreage support the yield being delivered or reported based on previous activities? Certifier reviews at this stage of the process would be one of the most important steps in the process.

The data entered into the system (or network or chain) would then move across different nodes as product is transferred and transformed between handlers and brokers. Organic certifiers would act as approval authorities at each stage, verifying the authenticity of the product and the organic certification status of transactions. USDA would have visibility into the entire network to reaffirm certifier oversight activities, and to conduct investigations as needed. As with any system, effectively designing workflows, user roles and rights, and the data element requirements would be critical steps in system design.

Ultimately, we anticipate that critical data to populate a U.S import certificate would flow from the system into the ACE import system of record. Once the product enters the U.S., it would be overseen by the existing domestic organic control system.

4.4. Next Steps

NOP is eager for feedback about possible approaches for developing an international organic verification and traceability system. Next steps are as follows:

- Continue to work to advance the “organic message set” project with CBP

- Launch the organic export certificate functionality in eTDE
- Invite feedback from the organic trade and systems development teams to further refine the concepts introduced in this Needs Assessment; engage in the next step of developing a System Vision document to further articulate system options.

5.0 Closing

Rapid organic growth has increased the complexity of organic supply chains, and has created new challenges for organic oversight. This report has focused on current activities and future opportunities to enhance the oversight of organic imports. Protecting the integrity of imports is a shared responsibility across all participants in the organic market: producers, buyers, brokers, organic certifiers, and the USDA. AMS will continue to work closely with our Federal partners and participants across the organic public-private partnership to transform opportunities into the actions needed to realize our shared vision of organic integrity from farm to table.

6.0 Acronyms

ACE - Automated Commercial Environment
AMS - Agricultural Marketing Service
APHIS – Animal and Plant Health Inspection Service
API - Application Programming Interfaces
BIEC - Border Interagency Executive Council
CEMS - Compliance Enforcement Management System
CBP – Customs and Border Protection
EAN - Emergency Action Notification
eTDE - Electronic Trade Document Exchange
HTS - Harmonized Tariff Schedule
IAA - Inter-Agency Agreement
ITS – Information Technology Services
MOAD – Marketing Orders Agreement Division (AMS Program)
NOP – National Organic Program
OFPA - Organic Foods Production Act
OMB - Office of Management and Budget
PPQ - Plant Protection and Quarantine (APHIS Program)
USDA – U.S. Department of Agriculture