



Accredited Certifiers Association
PO Box 85 Mabel, MN 55954
(844) 783-7974
www.accreditedcertifiers.org

Paul Lewis, Ph.D.
Standards Division Director
National Organic Program
USDA-AMS-NOP
1400 Independence Avenue, SW
Room 2646—So., Ag Stop 0268
Washington, DC 20250-0268

January 17, 2017

Re: AMS-NOP-15-0012; NOP-15-06
Organic Livestock and Poultry Practices – Withdrawal

Dear Dr. Lewis:

Thank you for the opportunity to provide comments regarding the proposed withdrawal of the Organic Livestock and Poultry Practices (OLPP) final rule. The Accredited Certifiers Association, Inc. (ACA) is a 501(c)(3) non-profit educational organization created to benefit the organic certifier community and the organic industry. The ACA strives for consistency in organic certification to uphold organic integrity, maintain stakeholder trust, and grow the organic industry. We are committed to being a positive influence for the good of the organic community. Our organization is made up of 54 certifying agencies worldwide and includes 45 of the 48 accredited certifiers headquartered in the United States. We are the frontline decisionmakers for the National Organic Program (NOP).

Withdrawal of the OLPP rule would be a mistake – one that would retain and extend inconsistent treatment of livestock operations under the federal organic program. Rejection of the necessary clarifications and extensions of existing regulations will erode consumer confidence in the USDA Organic label and slow industry growth. We attach our previous comments on the matter for detailed reference.

According to the 12/18/2017 Federal Register Notice, the main rationale for withdrawal of the OLPP final rule is the lack of USDA authority under the OFPA to adopt certain measures in the rule. This rationale is incorrect.

Analysis

The following statement appears in the [proposed withdrawal notice](#):

AMS is proposing to withdraw the OLPP final rule because it now believes the OFPA does not authorize the animal welfare provisions of the OLPP final rule. Rather, the agency's current reading of the statute, given the relevant language and context, suggests OFPA's reference to additional regulatory standards "for the care" of organically produced livestock should be limited to health care practices similar to those specified by Congress in the statute, rather than expanded to encompass stand-alone animal welfare concerns.

AMS' "current reading of the statute" is out of step with the understanding of every prior administration since the Organic Foods Production Act was passed in 1990 and the widely applied implementation practices of its certifying agents. AMS appears to mistakenly focus only on Section 6509's provisions regarding further development of livestock standards with regard to substances or medications that may be used in the event of illness. Most of livestock care and management *is not about medicine*. This misplaced focus ignores the context and plain language of other relevant sections of the statute that require the development of "detailed regulations" for "standards of livestock production." **7 U.S.C. § 6509(g)**

For the last 17 years there have been many "standards of livestock production" adopted that do not directly restrict or allow medicine in livestock production. In fact, the entire thrust of organic certification, and our work with livestock operations, is to ensure the overall system management protocols as set forth in the Organic System Plan result in *minimizing* the use of synthetic medications. See **7 U.S.C. §6509(d)(1)** (prohibiting medicine in the absence of illness). This approach is fully reflected in the regulation's sections governing livestock production that have been in place for many years. See **7 CFR §205.238** (requiring "preventive livestock healthcare practices" that include species selection, feed content and quality, housing, pasture conditions, exercise, etc.); see also **7 CFR §205.239** (requiring management that promotes "living conditions" supportive of "health and natural behavior"; "access to outdoors"; "direct sunlight"; "reduction of potential for livestock injury." This overall approach has never been challenged, and the sudden about-face by AMS is inconsistent with the OFPA, the existing regulations, and the general understanding of certifying agents.

Moreover, the proposed reading of the OFPA to exclude the regulatory clarifications in the OLPP appears to place certifying agents in a conflicted position under the statute. Certifying agents must "fully comply with the terms and conditions" of the National Organic Program. See **7 U.S.C. §6515(f)**. If Congress' use of "standards of livestock production" does not authorize regulations such as cited above and more fully appearing in **7 CFR §205.236-39**, how can certifying agents ensure compliance with regulations that are not simple restrictions on healthcare substances like medications? If operations refused to comply with the existing requirements on the grounds of the very narrow statutory construction proposed by AMS, the entire organic livestock sector is at risk.

The Organic Foods Production Act (OFPA) states:

Notice and Public Comment – The Secretary shall hold public hearings and shall develop detailed regulations, with notice and public comment, to guide the implementation of the standards for livestock products provided under this section. **7 U.S.C. §6509(g)**

Further, **7 U.S.C. §6509(d)(2)** of the OFPA states: “The National Organic Standards Board shall recommend to the Secretary standards in addition to those in paragraph (1) for the care of livestock to ensure that such livestock is organically produced.” It is an unambiguous statutory requirement that the NOSB recommend additional standards, such as those contained in the OLPP.

The January 18, 2017 [Organic Livestock and Poultry Practices Final Rule webinar](#) contained a slide stating:

When AMS first published organic regulations in 2000 and announced the establishment of the National Organic Program, we also stated that we would work with the National Organic Standards Board, or NOSB, and the public to develop species-specific guidelines and space requirements for organic animals.

What has changed since January 2017 and today that justifies the reversal of approach to organic livestock production practices? The conflict between AMS’ “current reading of the statute” with the construction given the statute by AMS between 2000 and January 2017 is staggering.

The notice of proposed withdrawal implies that implementation of the rule would be to rewrite “unambiguous statutory terms,” and disregard the “unambiguously expressed intent of Congress.” As is demonstrated above, AMS’s presently proposed construction of the statute is out of step with Congressional language, intent and the agency’s approach taken these last 17 years.

The Cost-Benefit Analysis Error Cannot be Fully Addressed

USDA contends in its Notice of Proposed Withdrawal that its cost-benefit analysis in the OLPP was flawed. There is insufficient information in the Notice to prepare a full response. And the evidence and data necessary to prepare a full response is in the exclusive control of the USDA. But perhaps the most important conclusion is that the cost-benefit analysis captures only a small part of the rationale for completing the OLPP. The statute, which commands USDA consult with the NOSB and public and develop detailed livestock production standards should not be subordinated to the results of an economic exercise that is based on many unvetted assumptions about the marketplace when the record in the combined rulemaking establishes

the vast majority of organic livestock producers, and organic consumers, believe the updated and improved regulations are needed and worthwhile.

Conclusion

The organic program depends on consumer acceptance of the standards as the best, most fully vetted and most thoroughly overseen production standards known in American agriculture. Consumer trust depends on certifying agents implementing consistent oversight of the many management practices required by the federal program. The clarifications and extensions of existing rules in the OLPP are necessary to ensure consistency and maintain trust. As such, the loss of the OLPP would result in a significant harm to the organic seal.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Cruse".

Jennifer Cruse
Coordinator