



October 5, 2020

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: National Organic Program; Strengthening Organic Enforcement (AMS–NOP–17–0065; NOP–17–02; RIN 0581-AD09)

Dear Ms. Tucker,

The International Dairy Foods Association (IDFA) respectfully offers these comments to the Agricultural Marketing Service’s proposed National Organic Program; Strengthening Organic Enforcement. Strengthening and protecting the integrity of the organic supply chain is critically important to maintaining consumer confidence in the USDA Organic label for dairy foods.

The International Dairy Foods Association (IDFA), Washington, D.C., represents the nation’s dairy manufacturing and marketing industry, which supports more than 3 million jobs that generate \$159 billion in wages and \$620 billion in overall economic impact. IDFA’s diverse membership ranges from multinational organizations to single-plant companies, from dairy companies and cooperatives to food retailers and suppliers, all on the cutting edge of innovation and sustainable business practices. Together, they represent 90 percent of the milk, cheese, ice cream, yogurt and cultured products, and dairy ingredients produced and marketed in the United States and sold throughout the world. Delicious, safe and nutritious, dairy foods offer unparalleled health and consumer benefits to people of all ages. Several of IDFA’s members process and sell organic dairy products, as independent processors and dairy cooperatives and as retailers with private-label brands. IDFA’s comments address the proposed rule’s definition of “handle” and how the revised definition uniquely impacts two major segments of the organic dairy industry supply chain.

Milk Haulers

IDFA’s first concern relates to milk haulers, who transport raw milk from the dairy farm to the local dairy processing facility. It is important that milk haulers, and organic certifiers, have a clear understanding of which entities must obtain organic certification under the National Organic Program (NOP). IDFA is concerned that the proposed language could cause confusion and lead both milk haulers and organic certifiers to reach the conclusion that the transportation of raw milk for processing requires organic certification.

The milk hauler will typically need to stop at more than one certified organic farm in order to fill a stainless steel straight chassis tanker truck that can hold on average 35,000 pounds of raw milk. Organic dairy farms are typically on the smaller side and it is not uncommon for the hauler to collect raw organic milk from multiple organic farms to fill a tanker truck. The process of transporting raw organic milk from the dairy farm to the processing plant has never involved processing or altering the milk in any way, thus NOP's organic regulations have never classified the transportation of raw milk as a "handling" activity requiring organic certification. Instead, the audit trail of both the certified organic dairy farm and dairy food processor has ensured that raw milk transportation meets the requirements of the NOP.

NOP recognizes in the proposed rule's preamble that "... transport also qualifies as a low-risk activity and may be identified in the organic system plan of a certified handler. Because transport alone is not a handling activity (see 7 U.S.C. §6502(8) and 7 CFR §205.2), operations that only transport organic products are not required to be certified." (85 FR 47544) The preamble continues, recognizing that "[c]ertifying agents have expressed confusion about which activities constitute transport versus which activities qualify as handling and, thus, require certification." *Id.* IDFA supports NOP's confirmation in the preamble that transportation alone is not a handling activity requiring certification, but the proposed regulatory definition of "handle" may cause confusion.

Current regulations at 7 CFR §205.2 define "handle" as follows: "[t]o sell, process, or package agricultural products, except such term shall not include the sale, *transportation*, or delivery of crops or livestock by the producer thereof to a handler." (emphasis added). The proposed regulatory definition removes the exclusion for "transportation" while adding the terms "combining, containerizing, storing, receiving or loading" that could be confused with the action of loading raw milk into a bulk tank for transportation.

The proposed rule also adds a new exclusion at §205.101(e), providing that "[a]n operation that only stores, receives, and/or loads agricultural products, but does not process or alter such agricultural products" does not require certification. While the proposed exclusion is helpful, it does not specify "transportation." IDFA is concerned that removal of the term "transportation" will result in confusion among some certifying agents. To provide needed clarity, we recommend that NOP consider establishing a separate exemption for the transportation of organic products to be defined as:

"An operation that only transports certified organic product from a certified handling operation to another certified handling operation or final retail operation."

Retail Sale of Private-Label Brands

IDFA's second concern relates again to the definition of "handle" and whether retail operations that "sell", but do not process, private-label organic brands are deemed "handlers" requiring certification. In discussing this issue with IDFA members and other stakeholders, it is evident that NOP's proposal has sowed confusion over NOP's intent.

In the rule's preamble, under the section of amendments considered but not proposed, NOP explains that the proposed amendments to §205.2 and §205.100–101 would require both parties engaged in a private-label agreement (the brand owner and the contract manufacturer) to be

certified. In contrast, the proposed regulatory language at §205.101(b) would exempt from certification those retailers selling, but not processing organic products. Read together, IDFA finds the preamble and regulatory text confusing, if not conflicting. The proposed regulatory text excludes from certification those retailers who sell, but do not process organic products, but the preamble does not – at least when it relates to private-labels. Without additional explanation, stakeholders do not have sufficient information or clarity to provide meaningful comment as to why private-label arrangements would not fall under the retailer exclusion.

If NOP's intent is to require certification for retailers who sell, but do not process, organic products via private-label brand arrangements, IDFA opposes this provision of the proposed rule. NOP provides no practical, policy or legal justification for differentiating between retailers that sell organic products and retailers that sell, but do not process, their own organic private-label brand.

For the dairy industry, it is very common for a retailer to have branded organic dairy products on the retail shelf alongside private-label organic dairy products processed by a certified contract manufacturer. It may even be the same manufacturer. In both cases, the retailer would not be conducting any "handling" because the organic dairy product is processed, packaged, sealed and labeled by the certified co-packer/private-label contract manufacturer. The organic dairy product arrives at the retail store sealed, packaged and "retail ready" to be placed on the shelf not unlike any other organic dairy product.

Any contract manufacturer for an organic private-label brand must be certified. Duplication of certification requirements does not provide additional measures to protect a dairy product's integrity, improve transparency or traceability or prevent organic fraud. Indeed, any retailer engaging in organic fraud *with their own private-label brand*, at a minimum, risks enormous reputational damage. Instead, the duplicative certification requirement would add costs to the retailer and potentially lower the demand for third party processing/co-packing of organic private dairy brands.

Unfortunately, the proposed rule's Economic Analysis (EA) does not assess the economic impact of this provision. Instead, the EA examines the associated labeling requirements considered, but not actually proposed by the rule. As noted above, the private-label business arrangement is common in the organic dairy industry and many certified co-packers/private-label manufacturers rely on these business arrangements. For some manufacturers, processing private-label brands is most, if not their entire business model. The costs associated with organic certification are likely to impact the volume and/or price of organic private-label dairy products, harming certified organic processors and reducing the variety of organic dairy products offered to consumers. IDFA strongly urges NOP to consider the economic impacts on private-label arrangements on the organic dairy processing industry.

Against this backdrop of confusion over the NOP proposal and the arbitrary treatment of private-label business arrangements, we recommend that NOP clarify in both the preamble and regulatory text that retailers selling, but not processing, private-label brands are not "handlers" and are exempt from certification. Alternatively, we recommend that NOP address private-label and brand certification in a separate rulemaking process. The additional time and public

notification will help reduce confusion and provide NOP with meaningful comments necessary to finalize a clear and well-reasoned rule.

IDFA members who are members of the organic dairy community support strong and clear rules to ensure robust enforcement of the NOP and integrity of the organic label. We thank you for this opportunity to comment and look forward to working with NOP in the future.

Respectfully submitted,

A handwritten signature in black ink that reads "Danielle Quist". The signature is written in a cursive, flowing style with a large initial 'D'.

Danielle Quist
Vice President, Regulatory Affairs and Counsel
International Dairy Foods Association