

October 5, 2020

Dr. Jennifer Tucker
Deputy Administrator
National Organic Program
U.S. Department of Agriculture
1400 Independence Ave SW
Washington, DC 20250

Re: AMS-NOP-17-0065; NOP-17-02 / RIN 0581-AD09

Dear Dr. Tucker:

On behalf of our nation's grain millers, the North American Millers' Association (NAMA) is pleased to submit comments regarding the proposed rule, "National Organic Program; Strengthening Organic Enforcement" (Federal Register Volume 85, Number 47536 (Wednesday, August 5, 2020) Pages 47536-47592).

NAMA represents millers of wheat, corn, oats, and rye across the continental United States, Puerto Rico, and Canada. Our members take raw grain and, through grinding and crushing, create flour and other products that are used to make favorite foods, such as bread, cereals, pasta, cookies, cakes, and snack foods. The organic market for milled grains continues to grow and synergies between growers and processors in Canada and the U.S have helped our members respond to this demand. We support the intent of the proposed rule to further curtail fraudulent activities within the organic market. However, we are concerned that this proposed rule would have damaging unintended consequences on trade between the U.S., Mexico, and Canada due to the conflict between the speed of commerce in North America and the framework laid out in this proposal for import certificates.

The existing framework for import certificates only requires certificates for imports from six countries, which are all overseas. Information on shipping containers, vessels/voyages, and quantity is typically determined days or weeks before a vessel leaves port. In contrast, timelines and overall logistics of the proposed regulations do not translate to truck and/or rail trade from contiguous countries. Trailer numbers are often unknown until arrival for loading. The quantity of a commodity or ingredient departing a farm or facility in Canada is finalized when loading is complete, sometimes only hours before the product arrives at the border.

The 30-day timeframe for certifying agents to review and issue an National Organic Program (NOP) Import Certificate is not appropriate for the grain milling industry. As written, the proposed rule would give the certifier 30 days to issue a certificate. However, the importer must upload the certificate to the U.S. Customs and Border Patrol (CBP) Automated Commercial Environment (ACE) within 10 days of organic product crossing the border. Trucks cross the border within approximately 2 days of departure, and oftentimes sooner. Product could arrive at the U.S. recipient without the required documentation and the exporter's certifier would still have 28 days

to issue the import certificate. However, the recipient would only have 10 days to upload it. This misalignment of timelines will put undue burden on the recipient, despite the fact that they have no control or influence on the issuance of the certificate by the exporter's certifier. In addition, trade will effectively be unable to occur when certifiers' offices are closed.

Further, when product arrives before the import certificate is issued, recipients will have to either segregate or hold products until import certificates are available or take the risk of accepting the product without the import certificate. With the timelines described in the proposed rule, this could be a frequent occurrence. Grain handling infrastructure and logistics are not set up for delays and holds of this type. However, use of product without an import certificate could result in brand damage and severe certification repercussions if the certificate is not subsequently issued. Logistics of holding truckloads and railcars of commodities are extremely challenging and prohibitively expensive. These expenses would be in addition to the original cost of the certificate. With certifiers charging of up to \$60 per item for similar documentation, these costs would quickly balloon. Companies in the U.S. would also need to account for the personnel needed to complete and manage these documents. Ultimately, these costs would be passed along to the customer and the U.S. consumer. Furthermore, rural producers may not have the means to make import certificate requests promptly by fax or email. This will delay the initial request and subsequently delay the issuance of the import certificate. Doing business directly with the grower and maintaining short, transparent supply chains will become more challenging.

Certifier capacity is also a major concern for the grain milling industry. Currently, most customers in the U.S. do not require organic import documentation of the type described in the proposed rule from Canadian suppliers. For many, this is due to familiarity with suppliers and the existing equivalency arrangements. Under this proposed rule, a single pallet or bag of an organic product on a truck of wholesale ingredients or retail products would require an import certificate. Every truckload of raw commodities would need an individual certificate. Based on our member experiences, we are not at all confident that the Canadian certifiers will be able to go from issuing trivial numbers of export documents for US-bound shipments to issuing tens of thousands (conservatively) on an annual basis, particularly not in the short timeframes needed to support uninterrupted trade. While there is an allowance in the proposed rule for "equivalent data sources" for shipments, there is a lack of information on the requirements and approval of these systems.

With regard for our concerns with this proposed rule, the grain milling industry would like to offer a few recommendations. First, we would suggest modifications to the NOP Import Certificate based on the primary mode of transport. Truck and rail transport should be eligible for multi-shipment certificates, similar to the "Multi-Shipment Transaction Certificate" used by the Global Organic Textile Standard (GOTS). This proven system has similar traceability expectations and is applied to commodities traded in large volumes. This suggests a similar system would be a workable solution for imports from contiguous North American trade partners.

Second, it would be useful to provide an allowance for pre-approved suppliers. Disclosure and review of planned suppliers to the certifiers would result in a pre-approval. This could be limited to a set time period, volume of product, specific list of products, etc. and would remove the need

for an import certificate when buying from the established supplier. This information would then become part of the supply chain verification requirements for the certifier. Import certificates would still be required from new suppliers or when not included in the pre-approval framework (i.e., additional volume, new products, etc.), preserving the transparency and traceability of organic supply chains.

Lastly, we request delayed enforcement with a phased implementation of the import certificate requirement for imports via truck and rail. This will allow additional time for adequate hiring of staff by certified operations and certifiers, development of electronic submission tools, and robust testing of the ACE system. While the proposed rule is reliant on integration with ACE for NOP Import certificate tracking and storage, this seems to be almost entirely untested for truck and rail imports to date. Delayed implementation for truck and rail imports will allow time for the system to first adapt to the higher volume of sea imports from additional countries. We propose delayed implementation by at least a year for rail imports and at least two years for truck imports. This would create a gradual increase in system use. Ideally, this delay would also allow time for NOP development and support of a system similar to the FDA Import Trade Auxiliary Communication System (ITACS) to check the status of the import certificate after it is requested and/or for submission of import certificate requests.

If finalized as written, this proposed rule would result in significant delays in trade and monetary burdens on the U.S. grain industry, and ultimately, on the U.S. consumer. While further curtailing fraudulent activities within the organic market should remain a top priority, it is imperative that any new regulations allow trade between the U.S., Mexico, and Canada to remain free flowing, minimizing the cost to U.S. consumers.

We appreciate the opportunity to provide comments on an issue that deeply impacts trade between the U.S. grain industry's top two trading partners. Thank you for your time and consideration.

Sincerely,

Jane DeMarchi
President
North American Millers' Association