



April 29, 2020

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

**Re: Docket:** AMS-NOP-20-0037; NOP-20-03

**Request for Enlargement of Time to Submit Comments on Economic Analysis Report**

Dear Dr. Tucker:

On April 23, 2020 the Department published its "Economic Analysis Report: Peer Review of Regulatory Impact Analysis for the Organic Livestock and Poultry Production Practices Rule and the Withdrawal Rule." 85 Fed. Reg. 22664-77 (April 23, 2020) ("the Economic Analysis"). The Economic Analysis reviews two prior Regulatory Impact Analyses: "the OLPP Rule (Final RIA) and the Withdrawal Rule (Withdrawal RIA)." 85 Fed. Reg. at 22664. Commenters are requested to analyze the document, adduce relevant information and data to support their comment and are directed to submit comments to the Department in approximately thirty days. *Id.*

The Organic Trade Association ("OTA") is a membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing over 9,500 organic businesses across 50 states. Our members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. Our members are not typically professional economists nor are they like the USDA that have economists on staff.

After a conducting a careful preliminary review of the Department's Economic Analysis, OTA has determined the document's complexity, lack of clarity and express findings on key issues, and failure to address the full range of legal and factual issues appurtenant to administrative action under the Organic Foods Production Act and APA, together support a request for not less than a thirty-day (30 day) extension of the present deadline, currently set for May 26, 2020. OTA respectfully requests the period for receipt of comments addressing the Economic Analysis be reset for June 26, 2020.

The implementation of the OLPP has been delayed since the Department's first Delay Rule in Feb. 2017. By the time of the publication of the April 23, 2020 Economic Analysis, the Department has taken three years and two months to write and rewrite its economic analysis while the public has had but 30 days to comment. Now, nearly thirty-six months after the OLPP was supposed to become effective, the Department requested and received a 180-day period from the U.S. District Court to revisit its analysis. Against this backdrop, the organic stakeholders and public are provided a scant 30-day comment

opportunity. This patently unfair allocation of time to itself and so little to the public is only exacerbated by the fact that the Department retains approximately 90 additional days to conduct further revisions *after* the expiration of the public comment period. This is not what the U.S. District Court had in mind.

Moreover, the present approach of the Department flatly contravenes Executive Order 12866, which providing for presidential review of agency rulemaking via the Office of Management and Budget's Office of Information and Regulatory Affairs, states that the public's opportunity to comment, "in most cases should include a comment period of not less than 60 days." Exec. Order No. 12866, § 6(a), 58 Fed. Reg. 51735 (October 4, 1993). Similarly, the APA requires adequate notice and a meaningful opportunity to comment. 5 U.S.C. § 553 (b)-(c). Last, the latest document fails to comply with OMB Circular A-4 which directs agency analyses to include all relevant information, including final conclusions, in a manner that permits a third-party to understand and offer meaningful comment.

While there may be many reasons the Department has been unable for three years to produce a cogent economic analysis, the principal problem with the Department's approach these last 38 months has been the persistent lack of meaningful opportunity for the affected parties and the public to provide comment. The Economic Analysis is a complicated and extensive document that requires professional review. The record shows a fundamentally unfair process and that is increasingly indistinguishable from an intentional effort to exclude meaningful comment and the airing of contrary views. The proposed 30-day comment period, if not altered, will once again deprive the Department of the best thinking and will frustrate the development of a robust record.

Moreover, it is not necessary to limit the comment period to this extent to meet the dictates of the District Court. The Department could easily allow a 60-day comment period and still publish its final document in the Federal Register by September 2020. *See* ECF No. 112 ("the parties shall submit a joint status report no later than September 8, 2020 or two weeks after a revised final rule has been published, whichever is earlier.")

### Conclusion

For the foregoing reasons the request for a 30-day extension until June 26, 2020 should immediately be granted.

Respectfully submitted,



Laura Batcha  
Executive Director/CEO  
Organic Trade Association