

**THE ORGANIC PLUS TRUST INC.**

# **Program Manual<sup>1</sup>**

## **Certified Grass-Fed Organic Livestock**

**2019**

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## GENERAL BACKGROUND<sup>2</sup>

### I. A Public “Benefit” Company that Extends Organic’s Reach

A. The Organic Plus Trust Inc., (“OPT”) is organized as a “public benefit” company. OPT’s charter dedicates it to the public benefit of improvement in human, farm animal, and environmental health by enlarging upon existing federal organic production and handling standards and verification tools to meet business and consumer preferences.

B. Existing federal organic certification<sup>3</sup> standards and Accreditation<sup>4</sup> performance requirements are the OPT’s conformance baseline. OPT’s principal activity is the cooperative development of production and handling standards and supply chain oversight mechanisms that extend, expand and bolster the existing requirements for certified organic Operations<sup>5</sup> and accredited certifying agents.

C. Funding for the OPT’s work is expected to primarily derive from small administrative fees and a licensing program for the use of its Licensed Trademarks.

D. OPT’s work is managed by EarthClaims LLC. (the “Program Manager”) The Program Manager<sup>6</sup> is not directly affiliated with an ACA and is not an OPT-accredited Certification body (“Certifier”).

### II. The OPT Standards Modules

A. Starting with federal organic requirements allows OPT to develop standards in a highly targeted, consumer sensitive manner. These standards are referred to as “modules” because they presently are designed to supplement existing organic Certifications.

B. OPT modules are published under a Creative Commons copyright license for no fee.<sup>7</sup>

C. OPT develops its standards by an open and inclusive process that involves diverse opinions. OPT conducts ongoing review of each module’s standards by stakeholder subcommittees and receives input directly by a case by case petition process under which any materially affected person may petition for a change in existing OPT modules.

D. A module-specific Steering Committee oversees standards development and maintenance.

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<sup>2</sup> The governing definitions for this Program Manual are those appearing at 7 C.F.R. §205.2 and in Appendix A herein. Words that are defined are capitalized for ease of reference.

<sup>3</sup> See Appendix A: Definitions at 7

<sup>4</sup> See Appendix A: Definitions at 2

<sup>5</sup> See Appendix A: Definitions at 24

<sup>6</sup> See Appendix A: Definitions at 34

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## III. The OPT Module: “Certified Grass-Fed Organic Livestock Program™”

A. The absence of a consistent national production standard for “Grass-Fed” livestock product marketing claims and the lack of full supply chain verification programs led to the development of the “Certified Grass-Fed Organic Livestock Program™” (hereinafter “the OPT Program”).

B. The development of the production, handling and Accreditation standards lasted approximately two years and included many stakeholders in the “Grass-Fed” livestock movement including two accredited certifying agents (“ACAs”): The Northeast Organic Farming Association of New York (“NOFA-NY”) and Pennsylvania Certified Organic (“PCO”).

C. To market products under the Certified Grass-Fed Organic Livestock Program™ the involved production and handling Operations must be certified organic *and* certified to a specific OPT standard.

D. The Certified Grass-Fed Organic Livestock Program™ module is in a style and format that tracks NOP regulations.

E. The Program Manager will conduct Accreditation assessments of ACAs and support the Steering Committee in its management of the ongoing production, handling and Accreditation standards development processes.

## IV. The OPT Accreditation Program

A. OPT Certification Services<sup>8</sup> are provided *solely* by ACAs that have received a module-specific Accreditation by OPT. OPT is not a certifying body and conducts no Certifications.

B. All federal requirements applicable to organic Accreditation, inspection and Certification through ACAs will be maintained and be fully operative in the OPT Certification process, including all ethical responsibilities.

C. An OPT module-specific Certificate of Accreditation will be provided to ACAs accredited by OPT. A Certificate of Compliance<sup>9</sup> will be used for each certified Operation to ensure consistent identification of compliant products throughout the supply chain.

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<sup>8</sup> See Appendix A: Definitions at 9

<sup>9</sup> See Appendix A: Definitions at 6

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## ACCREDITATION PROGRAM BACKGROUND

### V. The 2019 OPT Pilot Accreditation Program

A. Only ACAs are eligible to seek Accreditation to provide Certification Services for the Certified Grass-Fed Organic Livestock Program™.

B. The OPT Accreditation Program does not replicate the cost and effort of a federal certifying agent Accreditation: it builds on it. Existing federal organic Accreditation regulations and policies are incorporated into the OPT Certification Services Agreement.

C. The following brief outline describes the initial assessment, ongoing oversight, and reassessment of Certification bodies.<sup>10</sup>

#### 1. Application<sup>11</sup> for Accreditation

To determine the eligibility of a Certification body for OPT Accreditation, OPT requires submission of an Application that includes (1) proof of Accreditation as a federal organic certifying agent; (2) designation of the scope of OPT Accreditation sought (producer or handler); and (3) the ACA's policy manual or program manual.

#### 2. Accreditation Training

If the Program Manager finds, on the basis of the information submitted in the Application that the applicant meets the eligibility requirements for Accreditation, the applicant shall be invited to an on-line training.

- a) If EC finds, on the basis of the Application that the applicant does not meet the eligibility requirements the applicant shall be advised in writing.

#### 3. On-Line Training

The online training has three purposes. First, it seeks to familiarize certifying bodies with the module's unique requirements that extend certain organic practices or restrict the use of certain accepted materials or practices. Second, it is an opportunity to discuss the underlying program standards and the general terms of service. Third, it is a forum for other questions ACAs might have regarding the OPT and the Grass-Fed Organic program.

#### 4. Site Visit and Additional Information

If, after the training is completed, and all requested documents are in the Program Manager's

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<sup>10</sup> During the 2019 Pilot, awarded Accreditations will be for the calendar year.

<sup>11</sup> See *Appendix A: Definitions* at 2

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possession, and before the Certification Services Agreement is executed, any additional information is needed or in the rare case where a site visit is deemed necessary, the applicant shall be notified in writing. Such a visit would be conducted at the applicant's expense.

## 5. Accreditation Decision and Duration of Accreditation

Upon submission of the required information and completion of the required training, a Certification Services Agreement shall be provided and thereafter executed between the parties. Accreditation is complete after execution of the Certification Services Agreement. The initial term of Accreditation shall be for the 2019 calendar year.

## 6. Certificate of Accreditation

Each accredited entity will receive a Certificate of Accreditation bearing the scope of the Accreditation and an expiration date of December 31, 2019.

## 7. Appeal

An adverse decision regarding Accreditation may be appealed on the terms set forth in Section XXIV of this Manual.

## 8. On-going Oversight and Renewal

The Program Manager will from time to time seek information from Certifiers<sup>12</sup> and prior to expiration of the Certification Services Agreement OPT will set forth a renewal process for Accreditation.

## 9. Forms and Templates

Each Certifier may develop and use its own Certification Services Materials as defined herein.

## 10. Accreditation Fee

There is no fee for the OPT Accreditation service and program training for the 2019 service year.

## 11. Certification Fees for Service

Each OPT-accredited Certification body may set their own, non-discriminatory, fees for offering OPT modules to their clients.

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<sup>12</sup> See Appendix A: Definitions at 10

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## STANDARDS DEVELOPMENT BACKGROUND

### VI. Governance of the 2019 OPT Grass-Fed Organic Standards Development

#### A. Steering Committee

OPT has convened a three-person Steering Committee to oversee the ongoing work on the OPT Program Materials.<sup>13</sup> The Steering Committee is presently composed of a Certifier stakeholder and two stakeholder handlers. The number of members, and its composition may change after the pilot year.

#### B. Subcommittees

The Steering Committee will convene three subcommittees.

- a. Production standards; and
- b. Handling standards; and
- c. Program Matters

#### C. Petitions

The Steering Committee will accept Petitions from any materially affected person for referral to its subcommittees.

#### D. Roberts Rules and Guidelines

The Steering Committee shall act in general accordance with Roberts Rules and the principles set forth below, as may be developed or revised from time to time. The Subcommittees shall be open to all materially affected persons or parties with regard to the subject or activity with the Subcommittee's purview.

#### E. Supermajority

A 2/3 supermajority of a quorum of the Steering Committee is required to adopt a new standard or an amendment to existing standard by the Steering Committee, regardless of the size of the Steering Committee.

##### 1. No Conflicts

In no case shall an OPT Program standard be adopted that is in direct conflict with a corresponding federal organic requirement. Federal organic standards are the baseline standards for this program.

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<sup>13</sup> See *Appendix A: Definitions* at 31

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## 2. Antitrust Policy

The OPT Program shall be developed in accordance with applicable antitrust and competition laws and meetings amongst competitors to develop such standards are to be conducted in accordance therewith

## F. The Subcommittees

### 1. Participation or Petition

Any person with a direct and material interest has a right to participate in a subcommittee's work by: (a) expressing a position and its basis, (b) having that position considered, and (c) having the right to appeal final outcomes. The following constitute the minimum acceptable due process requirements for the development of standards.

### 2. Openness

Participation in subcommittee work shall be open to all persons who are directly and materially affected by the activity in question. There shall be no undue financial barriers to participation. Voting membership on a standards subcommittee shall not be conditioned upon membership in any organization, nor unreasonably restricted on the basis of technical qualifications or other such requirements.

### 3. Lack of dominance

The subcommittee standards development process shall not be dominated by any single interest category, individual or organization. Dominance means a position or exercise of dominant authority, leadership, or influence by reason of superior leverage, strength, or representation to the exclusion of fair and equitable consideration of other viewpoints.

### 4. Balance

Subcommittees seek a balance of interests. Participants from diverse interest categories shall be sought with the objective of achieving balance.

### 5. Coordination and harmonization

Good faith efforts shall be made to resolve potential conflicts between and among subcommittee recommendations regarding existing standards that operate in the same market space.

### 6. Notification of standards development

Notification of subcommittee activity shall be announced in suitable media as appropriate to demonstrate an opportunity for participation by all directly and materially

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affected persons.

## 7. Consideration of views and objections

Prompt consideration shall be given to the written views and objections of all subcommittee participants.

## 8. Vote

Each subcommittee participant has a single vote. A simple majority of participating subcommittee members are required to advance a subcommittee recommendation to the Steering Committee.

## 9. Appeals

There are no appeals of final decisions of the Steering Committee, however a petition to correct or amend the any change the OPT Program may be submitted.

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## CERTIFICATION SERVICES BACKGROUND

### VII. Certification First Principles

The following first principles govern the delivery of Certification Services and issuance of Certification to a compliant Operation under the OPT-Certified Grass-Fed Organic Livestock Program™.

- A. The OPT Program is underpinned by the NOP and incorporates to the extent reasonably possible the existing federal regulations and federal guidance governing Certifiers and certified Operations.<sup>14</sup>
- B. Certification Services are delivered under the Certification Services Agreement that incorporates the OPT Program Materials, the applicable OPT Ancillary Materials<sup>15</sup> the applicable Certification Service Materials<sup>16</sup> and strives for general accord with NOP Guidance No. 2601 “The Certification Process” (Dec. 16, 2013) and NOP Guidance No. 2005 “National Organic Program Accreditation Assessment Checklist” (Oct. 29, 2015) as applicable.;
- C. Certifiers may develop their own Certification Service Materials sufficient to ensure each Operation has written Practice Standards<sup>17</sup> reflecting elements necessary to ensure compliance with the OPT Program, which may be contained in an Organic System Plan.<sup>18</sup>
- D. The OPT Program should be construed and applied to maximize the use of grazing in each animal’s diet, minimize grain and grain-derived materials, and maximize animal well-being.
- E. Accreditation seeks to ensure the OPT Program is correctly construed and ensures consumers that products bearing the OPT Licensed Trademarks meet a consistent standard of identity.
- F. Certifiers shall construe and apply the OPT Program Materials to accomplish fundamental fairness to producers, handlers and consumers of certified products and to ensure animal well-being. Fundamental fairness is achieved when decisions under the OPT Program are made (1) in good faith; (2) with the care that an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner reasonably believed to be in the best interests of the public benefit goals of the OPT and the OPT Program.

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<sup>14</sup> See e.g. 7 C.F.R. §205.501(a) (10); see also NOP Guidance No. 2607 (Nov. 23, 2011) (“Disclosure of Information Concerning Operations Certified Under the National Organic Program.”)

<sup>15</sup> See *Appendix A: Definitions* at 27

<sup>16</sup> See *Appendix A: Definitions* at 8

<sup>17</sup> See 7 C.F.R. §205.2 (“Practice Standards”)

<sup>18</sup> See 7 C.F.R. §205.2 (“Organic System Plan”)

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- G. Certification is a conclusion of present compliance and a determination that future compliance is reasonably certain.
- H. Technological and programmatic innovation in Certification Services and Certification Service Materials is encouraged.

## **VIII. Federalism Principles**

- A. An OPT Program provision shall be construed and applied to comport with the plain meaning of guidance documents, regulations, or Certification and enforcement decisions issued by or on behalf of the NOP and to avoid conflicts therewith.
- B. Certifiers shall exercise discretion in a manner that accords with its duties under, and reflects appropriate deference to the plain meaning of, guidance documents, regulations, and Certification and enforcement decisions of the NOP.
- C. Certifiers or the OPT *may* act to discharge OPT-related duties regarding the requirements or interests appearing in the OPT Program or OPT Ancillary Materials, where NOP action or inaction has left a such interest demonstrably un-vindicated, including situations where the OPT the NOP appear to impose identical requirements.

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## CERTIFICATION PROGRAM GUIDANCE<sup>19</sup>

### IX. Definitions

The governing definitions for this program are those appearing at 7 C.F.R. §205.2 and those in Appendix A of this Program Manual. Unless specified otherwise, these definitions apply to each Application of the standards and governance requirements imposed on or by OPT-accredited Certification bodies.

### X. Governance Guidelines for Certification Services and Certificates of Compliance

#### A. Eligibility for Certification

##### 1. Operations

This program is open to any livestock production or livestock product handling Operation, that is presently certified under the NOP, or eligible to concurrently be certified under the NOP and the OPT program.

##### 2. Dairy Livestock

Eligible *dairy* livestock are solely those animals present at the applicant Operation at the time of the initiation of the required 90-day Transition period.

##### 3. Meat Livestock

Eligible *meat* livestock are solely those animals born at or obtained from an OPT-Certified Operation<sup>20</sup>, in accordance with Section III of the OPT Program for meat animals.<sup>21</sup>

#### B. Governance of the 90-day Transition Period and the Prohibition on Commingled Livestock<sup>22</sup>

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<sup>19</sup> in this Manual the Certification Program Guidance begins at Section IX, which corresponds to OPT Program Section I. Particular attention is paid to the locations where the Standard refers to the Program Manual for clarification. See e.g. OPT Program Sections II (B)(1); II (D)(1); V(E); V(L); V(P); VI(A); VII(B); X(A); X(B); XII; and XIII.

Section X

<sup>20</sup> See Appendix A: Definitions at 28

<sup>21</sup> Note: The OPT Grass-Fed Organic Meat standard does not permit Transition of meat animals.

<sup>22</sup> Note: The OPT Grass-Fed Organic Meat standard does not permit Transition of meat animals.

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The Certifier shall ensure each applicant Operation is provided with Notice<sup>23</sup>:

1. of the Transition requirements referred to at II(B)(3) of the OPT Program prior to initiation of the Transition period, and the Certifier shall ensure that its records demonstrate the Operation successfully completed the required Transition period; and
2. that the OPT-Certified Operation may not operate a separate certified organic dairy livestock production site in conjunction with, or at the same production site, as an OPT-Certified Operation; and
3. that organic and OPT-Certified dairy livestock shall not be commingled *except*, organic livestock may be placed at an OPT-Certified Operation under the terms set forth in Section III(C) of the Standards.

## C. Certification Services Governance

Certification Services are delivered under this program in general accordance with the process set forth in NOP Guidance No. 2601 (Dec. 16, 2013) styled “The Certification Process,” the Certification Services Agreement and Sections X and Y of this program manual.<sup>24</sup>

## D. Application for Certification Services

An Application for Certification Services under the OPT Program may be submitted to any Certifier in a form and upon a procedure established in the applicable Certification Service Materials or the OPT Ancillary Materials. An Application shall always bear a date and the signature of the Operation’s Responsible Person attesting to the accuracy of the information provided.

## E. Certificates of Compliance<sup>25</sup>

### 1. General

Each Certificate of Compliance shall be in a form made available as part of the OPT Ancillary Materials, however, the Certificate of Compliance may be modified to contain marks of the Certifier, if such modification is accepted by OPT prior to use.

### 2. Term<sup>26</sup>

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<sup>23</sup> See *Appendix A: Definitions* at 25

<sup>24</sup> Section X “Program Guidelines”; Section Y “Federalism Principles”

<sup>25</sup> See *Appendix A: Definitions* at 6

<sup>26</sup> OPT notes the NOP Instruction No. 2603: “Certificates” (Sept. 3, 2013) is a general guide to reading certificates under the NOP, but the OPT Certificate of Compliance has a fixed expiration date and the OPT Program Materials expressly recognize procedures for extension that are not identical to the those under the NOP.

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The Certificate of Compliance shall bear a date of first issuance chosen by the Certifier and shall run for twelve calendar months from that date and shall thereafter expire on the date of the twelve-month anniversary of issuance.

a) Initial

The first time an Operation is certified under the OPT Program the Certification of Compliance will include an issuance date and an expiration date.

b) Renewal

Each renewal of a Certificate of Compliance shall bear the original date of issuance and bear a new expiration date, that is one calendar year after the original, unextended expiration date that appeared on the most recent Certificate of Compliance.

### 3. Expiration and Extensions

The date of expiration appearing on a Certificate of Compliance may be reset:

- a) For up to sixty days upon a determination by the Certifier that the Operation has demonstrated Good Cause<sup>27</sup> exists, or the Certifier on its own determination finds that Good Cause exists, for resetting the date of expiration; and
- b) The new date of expiration entered under 3(a) may be reset for an additional thirty days, upon a determination by the Certifier that Exceptional Circumstances<sup>28</sup> exist, provided that in either case, the Certifier timely alerts OPT of the reset date of expiration date; and
- c) In no event shall a Certificate of Compliance be valid for more than fifteen consecutive months from the date of first issuance; and
- d) An expired Certificate of Compliance is invalid, and all rights thereunder are extinguished.

#### F. No Appeal of Expired Certificates

A *denial* of a request for resetting the expiration date by extension may be appealed under Section X, however, a Certificate of Compliance rendered invalid by *expiration* is final and may not be appealed. The sole remedy for an expired Certification is to re-apply for

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<sup>27</sup> See Appendix A: Definitions at 19

<sup>28</sup> See Appendix A: Definitions at 15

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Certification.

## G. Consequences of Expiration

If a Certificate of Compliance is allowed to expire it is, on the next business day, invalid. Thereafter products of that Operation, including livestock of a production Operation or processed products of a Handler, may not be transacted bearing the Licensed Trademarks or other marketing designations suggesting Certification to this program or compliance therewith *except,*

1. products that have entered the stream of commerce prior to the next business day after expiration shall not automatically be considered invalidly labeled and absent circumstances posing irreparable harm to the OPT program or human, animal or environmental well-being, no action by Certifier is required; and
2. OPT may, in its sole discretion, make an irreparable harm determination on its own recognition, or upon request from a materially affected party, including a Certifier.

## H. Renewal of Certification

Renewal of an Operation's Certification may be granted upon timely completion of the requirements set forth in the applicable Certification Service Materials, provided that:

1. renewal of Certification shall in all cases occur prior to the original date of expiration or the date any applicable period of extension has elapsed.

## XI. Governance of the Source and Identity of Livestock Requirements

### A. Use of the Farm Herd List<sup>29</sup>

The principle administrative tool for ensuring compliance with the OPT Program's source and identity of livestock requirements is accurate compilation and use of the Farm Herd List. Certifiers shall ensure that each OPT-Certified Operation adds animals, following initial Certification, to its Farm Herd List solely with those *born at or purchased* from OPT-Certified Operations unless the exception appearing at Section III(C) of the OPT Program is applicable. If the exception is applicable, the subject animal may be the offspring of an animal that is certified organic or, the offspring of an animal that at the time of birth is at an Operation that is in Transition under the OPT Program.

### B. Governance of the Commercially Unavailable<sup>30</sup> Exception

The Certifier must confirm that the OPT-Certified Operation has reasonably avoided reliance

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<sup>29</sup> See Appendix A: Definitions at 16

<sup>30</sup> See Appendix A: Definitions at 11

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on the exception in Section III(C) of the Program. Reasonableness shall be assessed by initially considering the applicable factors set forth in NOP Guidance 5029 (March 4, 2013) (“Seeds, Annual seedlings, Planting Stock in Organic Crop Production”) *except*, OPT-Certified Operations may consider the cost and welfare implications of transportation of an animal as a relevant factor, provided such concerns are reported to, and documented by, the Certifier. Other factors may be advanced by a Certified Operation and considered by a Certifier and in the event such factor is relied upon by the Certifier in determining the applicability of the exception the Certifier shall document its reliance and explain its reasoning. Documented reliance on such additional factor(s) will be evaluated by OPT on a case by case basis.

## C. Appealability of Commercially Unavailable Determinations

Certifier determinations that the Commercially Unavailable Exception is inapplicable are appealable by the OPT-Certified Operation.

## XII. Grazing Requirements

With regard to determining compliance with the grazing requirements for weaned animals older than six months, Certifiers should use the same principles and practices as those set forth in NOP Guidance Document Nos. 5017-1, 5017-2, 5017-3, 5017-4, 5017-5, 5017-6, 5017-7. (July 22, 2011) (“Dry Matter Intake Information for Access to Pasture.”)

If the NOP templates are used by the Certifier, the templates should be updated to reflect the specific grazing requirements of Section IV of the OPT Program. Each form or template developed by a Certifier shall be submitted and accepted by OPT in accordance with the Certification Services Agreement.

## XIII. Livestock Diet: Allowed, Restricted and Prohibited Feedstuffs

### A. Application of Organic Principles under the OPT Program

Section Five of the OPT Program categorizes feedstuffs as *allowed*, *restricted* and *prohibited*. These terms are to be applied in a manner generally consistent with the NOP’s Application of the same terms. Certifiers must verify that all forage, feed, and feed supplements are permissible in identity, content and quantity under the OPT Program, and shall use the same oversight mechanisms that are generally used to discharge the same duties under the NOP.

Certifiers may rely upon NOP Guidance No. 2615 “Organic System Plans, Organic System Plan Updates, and Notification of Changes” (Dec. 16, 2013) and NOP Guidance No. 5025 “Commingling and Contamination Prevention in Organic Production and Handling” (July 22, 2011) and NOP Guidance No. 2602, “Recordkeeping” (Jul. 22, 2011) at Section 5.2 (Livestock Recordkeeping).

### B. Restatement of Organic Principles

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The centrality of feed identity to the OPT Program bears some restating of the organic requirements. Certified organic producers must provide livestock feed pursuant to 7 CFR § 205.237. Section 205.237 states that agricultural ingredients included in the ingredients list for livestock feed products must be organically produced. Pasture and range used for feed and forage must be certified organic. All forages, feed, and feed supplements must be listed in the Organic System Plan (“OSP”), as required at § 205.201(a)(2). Certifying agents must verify that all forages, feed ingredients, formulated feed products, bulk feed products, feed supplements, and feed additives fed to organic livestock comply with the USDA organic regulations (§ 205.402(a)(1); § 205.237). These are binding under the OPT Program.

## C. Use of a Written Supplement to the OSP and Detailed Records Review

The OSP is not only a collection of practice standards but is also a predictive tool. Records need to be assessed against seasonal patterns and Certifiers shall ensure that each OPT-Certified Operation’s plan specifically details sources, composition and amounts of allowed and restricted feedstuffs in compliance with the OPT Program. If the Certifier does not require the Operation to submit and rely upon a written plan, the Certifier must provide a review of the grazing practices and feed purchase and use records that is sufficient to substantiate a finding that ongoing and future compliance is reasonably certain.

## D. Assessing Compliance with the Restricted Feedstuffs Section of the OPT Program

*Restricted* feedstuffs are different than *prohibited* feedstuffs because it is the feeding practice that determines whether the use of the feedstuff is permissible. This means either that the restriction is properly observed by the operator or the restriction’s relaxation was properly determined. This is not as simple as finding *prohibited* feedstuffs during an inspection.

Under the OPT Program *restricted* feedstuffs may be consumed at any time of the year provided the mandatory preconditions to deploying restricted feedstuff is satisfied. Certifiers shall ensure that written plans (if required) and detailed records and direct observations during inspection substantiate a finding that ongoing and future compliance with the restrictions is reasonably certain. In particular, Certifiers should make specific findings that:

1. Each use of restricted grain-free feedstuffs, even if routine, is necessary to support livestock nutritional stability and rumen welfare; and
2. no more than a single restricted feedstuff is allowed per day;
3. the binding restrictions on the allowed daily amount in the chart below are demonstrably observed.

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## SUPPLEMENTAL GRAIN-FREE FEEDSTUFFS<sup>31</sup>

ENERGY SUPPLEMENT <sub>1</sub>	SUPPLEMENT DRY MATTER PERCENT	MAXIMUM ALLOWED PER DAY ON DRY MATTER BASIS (lbs.)	STARCH, %DM	ENERGY, M CAL/lb.
Sugar Cane Molasses	88%	4	0.5	0.88
Sugar Cane Dry Sugar	100%	4	0.5	0.98
Sugar beets, Whole	20%	5	2.5	0.79
Sugar Beets, Pulp	92%	5	0.5	0.73
Carrots, Pulp	92%	5	5.74	0.77
Citrus, Pulp	92%	5	1.5	0.84
PROTEIN SUPPLEMENT <sub>2</sub>	-	-	-	-
Alfalfa Pellets	92%	5	2	0.58
OTHER SUPPLEMENTS	-	-	-	-
Kelp	99%	No Limits/Free Choice	N/A	N/A

4. The phrase “nutritional stability and rumen welfare are supported” provides the Certifier with discretion to address the aggregate impact of the daily use of restricted feedstuffs. The purpose is to determine whether the restricted feedstuff frequency is harms the livestock or circumvents the purpose of the restrictions. Sometimes it is difficult to assess whether a restricted practice masks substandard management practices regarding program requirements, e.g., best pasture management practices etc. Overuse of restricted feedstuffs could be a material predictor of such deficiencies. However, at present OPT does not impose any aggregate use limitation. Thus, it is entirely permissible to routinely use the restricted feedstuffs but not overuse them. The touchstone of the Certification assessment is whether the Certifier believes the authorization is being abused.

### E. Assessing Compliance with the OPT Restrictions on Use of Supplements

#### 1. Adopting NOP Approach

The OPT Program treats feed supplements, feed additives, vitamins or mineral products in the same manner as the NOP *except*, under this program such products are intended to be as free of grain carriers as is possible. NOP Guidance No. 5030, “Evaluating Allowed Ingredients and Sources of Vitamins and Minerals for Organic

<sup>31</sup> Energy Supplements are mutually exclusive on any single day. The intake values were calculated using 3.5 percent body weight of a 1200 lbs. ruminant animal; Crude protein for alfalfa pellets is assumed at 18 to 22 percent.

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Livestock Feed” (March 4, 2013) (“Supplement Guidance”) sets forth the basic legal framework for assessing livestock feed supplements and vitamin and mineral products.

## 2. Identifying the Contents of Supplements Prior to Inspection

To facilitate the Application of this framework, Certifiers should require all feed supplements, additives, vitamin or mineral product supplements<sup>32</sup> to be listed in the Operation’s Application or a supplemented OSP.

## 3. Applying NOP Guidance under the OPT Program

To determine whether the presence of a grain or grain-derived material in a feed supplement, vitamin or mineral product is a bar to its use, Certifiers should consider Section 4.2.3(c) of the NOP Supplement Guidance which notes that carriers that are “minor ingredients” are not subject to assessment for their organic status. Similarly, here, any grain or grain-derived carrier that is not an *ingredient* under the Supplement Guidance is a “minor” ingredient that is not grounds for disallowance of the product under the OPT Program.

## 4. Case by Case Analysis

If a grain or grain-derived carrier is not listed as a “minor ingredient” the product label may be submitted to the Program Manager for determination whether it is allowed under a separate *De Minimis*<sup>33</sup> analysis.

### F. Confirming Discontinuance of the Temporary Grain Allowance for Livestock Under Six Months of Age

This section requires that Certifiers obtain a written statement from each new applicant Operation stating the manner and extent of its non-routine use of grain in the diet of livestock under six months of age and a specific termination date of this management practice, that in no case shall run past December 31, 2020.

### G. Implementing the Temporary Health and Welfare Exception-Restrictions.

In accordance with the OPT focus on animal well-being, an OPT-Certified Operation, upon a documented finding of compromised animal health or welfare, may disregard the daily restrictions on the amount of supplemental non-grain feedstuffs. A “documented” finding of substandard health that deemed remediable by altering the identity of a feed ration is one that is:

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<sup>32</sup> The prohibition on “excluded methods” would prohibit use of grain-based carriers even at *De Minimis* levels if composed of or derived from genetically engineered grain.

<sup>33</sup> See *Appendix A: Definitions* at 14

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1. Made upon a record maintained or produced by a licensed veterinarian; or
2. A determination made by a responsible person at the certified Operation, that is supported by documented indicia of substandard health (e.g. abnormal growth pattern or declining body score, unusual decline in milk production, abnormal maternal instincts etc.) and that is verified by the Certifier at the time of inspection or submission of the documentation by other means.
3. Certifiers shall implement this subsection in accordance with the practices described in NOP Guidance No. 2615 “Organic System Plans, Organic System Plan Updates, and Notification of Changes” (Dec. 16, 2013) and NOP Guidance No. 2602, “Recordkeeping” (Jul. 22, 2011). Adapting the principles of these documents to the OPT Program should ensure that the authorization to disregard the daily restrictions on restricted feed sources is not abused or being used to mask a more systemic failure of management practices.

## H. Implementing the OPT Feed Prohibitions; Assessing the Need for Animal Disqualifications.

1. Consistent with NOP

Prohibited feedstuffs or feeding practices shall be assessed in the same manner and in accordance with the oversight mechanisms currently used by ACAs in assessing whether disallowed feedstuffs are used on organic livestock Operations. The principal method of oversight is the annual inspection however, Certifiers should stress to responsible parties at OPT-Certified Operations that the duty to disclose the occurrence of prohibited feedstuff consumption

2. Intentional Violations

Intentional feeding of prohibited feedstuffs, feed supplements, or intentional failure to comply with grazing requirements, shall result in disqualification of each affected animal. Such intentional actions shall normally result in decertification proceedings.

3. Inadvertent Violations

Inadvertent feeding of prohibited feedstuffs, feed supplements or inadvertent failure to comply with grazing requirements through operator oversight or negligence may result in disqualification of each affected animal. Such negligent or inadvertent actions may result in de-certification proceedings.

4. Proof and Specific Findings

Certifiers are directed to determine the extent of the departure from the program’s

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requirements and make a specific finding thereon, specifically including a determination of intentional or negligent non-compliance. Proof sufficient to demonstrate grounds for disqualification or decertification may come from records of the Operation, the absence of required records, or other clear and convincing evidence in possession of the Certifier. The finding, and the grounds upon which it is based, must be entered into the Certification record of the OPT-Certified Operation.

## 5. Mandatory and Permissive Disqualification of Animals and Animal Products

If the Certifier finds *intentional* non-compliance, disqualification of animals and animal products is mandatory and de-certification proceedings should be initiated. If the Certifier finds *unintentional* non-compliance, disqualification of animals and animal products is mandatory and de-certification proceedings are discretionary and may be initiated. If the Certifier finds the unintentional non-compliance to be no more than *de Minimis*, neither disqualification of animals or animal products is mandatory and de-certification proceedings are not required. The impact on the Operation's Certification shall be determined separately by the Certifier.

6. A Certifier should not consult with the Program Manager when considering whether to disqualify animals or animal products or decertify an OPT-Certified Operation to ensure any appeal of the decision to the Program Manager is untainted and free of pre-decisional bias.

## I. Variances from Program Standards

1. Certifiers may recognize variances from organic requirements, that are issued by the NOP or other federally authorized entities, and that apply to an OPT-Certified Operation. Such variances may relieve parties from duties or responsibilities arising under the OPT Program, if the variance in question addresses OPT-related duties and such duties are directly impacted by the issued variance.
2. Only the OPT may determine and issue a variance for the OPT Program that does not directly and unavoidably arise from NOP action, or a subsidiary governmental entities' action that NOP accepts or recognizes.
3. OPT-issued variances may be granted by OPT upon submission of a Petition from an affected person in a form and upon a procedure that is set forth in the Administrative section of this manual. Certifiers may also submit petitions for relief from program requirements.

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## **XIV. Exclusion of Milk for Meat from Disqualified Livestock**

To ensure livestock products from disqualified animals (or the animals themselves) do not enter the stream of commerce bearing the Licensed Trademarks or other Indica of OPT compliance, the following listed actions should be taken. Certifiers may decide measures in addition to, or in alignment with the following actions, to ensure the integrity of the meat and milk supply:

### **A. Disqualified Dairy Animals Must be Removed from the OPT-Certified Operation**

Disqualified dairy or meat animals shall be, immediately upon receipt of written Notice of disqualification, segregated from the compliant animals in the Operation's herd. A disqualified dairy animal must thereafter depart from the OPT-Certified Operation within 7 days of receipt of written Notice of disqualification from the certifying body.

### **B. The Milk of Disqualified Dairy Animals must be Segregated**

During the 7-day period following disqualification and before removal of the animal, any milk obtained from the disqualified animal shall be segregated from milk from compliant animals and,

1. an animal-specific, milk-segregation log shall be maintained that identifies the disqualified animal and records the amount of milk obtained and the manner by which its segregation is ensured; and
2. the milk-segregation log, and a signed statement verifying the removal of the disqualified animal(s) and identifying the recipient of the animals shall be supplied to the Certifier not less than 10 days after the dairy animal has been removed from the Operation.

### **C. Disqualified Meat Animals May Remain if a Split-Operation Exists**

A disqualified meat animal under the OPT Program need not be removed from the site, provided that the producer operates a Split Operation,<sup>34</sup> and the Certifier determines the records clearly account for this outcome and demonstrate the animal did not thereafter enter the stream of commerce bearing a Licensed Trademark or other marketing indications of compliance with the OPT Program.

## **XV. Livestock Healthcare**

### **A. No Specific Additional Practices**

At present, there are no OPT-specific healthcare practices (as that term is construed by the NOP) that differ from those imposed on livestock Operations under organic livestock

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<sup>34</sup> See *Appendix A, Definitions* at 36

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certification except, feedstuff identity, quantity and availability requirements may vary depending on assessments of rumen health and nutritional stability at OPT-Certified Operations.

## B. No Prohibition on OPT Action in the Event of NOP Inaction

The absence of a specific difference between the NOP and the OPT Program does not in all cases mean the outcome of review of a healthcare practice will be identical. Nor does it mean that NOP acceptance of a practice or Certifier decision necessarily and in all cases means OPT acceptance of the same practice or decision. As noted in the Federalism Principles Section in this Program Manual, the OPT may act in the absence of action by the NOP on matters and questions arising under apparently identical standards. See Section VIII (C)

## C. No Denial of Healthcare

The requirement that livestock never be denied necessary healthcare for the purpose of maintaining an animal's programmatic status under the NOP, is identical under the OPT Program: healthcare may not be denied to preserve OPT status or eligibility.

1. The same assessment and oversight mechanisms used by the Certifier and accepted by the NOP to discharge the duty duties under the NOP are sufficient here.

## D. Third Party Welfare Assessment in 2019

The OPT Program's requirement for a third-party animal welfare program is met during 2019 by participation in the welfare assessments conducted under the Farmers Assuring Responsible Management or "FARM" Program. The FARM program uses on-farm Second-Party Evaluations and a system for Third-Party Verification of those evaluations. The contours of the existing program are more fully set forth in its Animal Care Reference Manual for 2019 available at <http://www.nationaldairyfarm.com/animal-care#standardsapp>.

- E. OPT will revisit its reliance on the FARM program during 2019 and update the OPT Program Materials accordingly.

## **XVI. Livestock Living Conditions**

### A. No Specific Additional Practices

At present, other than increased grazing requirements, there are no OPT-specific livestock living condition requirements (as that term is construed by the NOP) that specifically differ from those required by the organic livestock certification. The same oversight mechanisms that are used by the Certifier to discharge the same duties under the NOP are appropriate, and findings of compliance for the NOP certification are sufficient to demonstrate compliance with the OPT Program.

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## B. No Prohibition on OPT Action in the Event of NOP Inaction

The absence of a specific difference between the NOP and the OPT Program does not in all cases mean the outcome of review of a living condition or related practice will be identical. Nor does it mean that NOP acceptance of a practice or Certifier decision necessarily and in all cases means OPT acceptance of the same practice or decision. As noted in the Federalism Principles Section in this Program Manual, the OPT may act in the absence of action by the NOP on matters and questions arising under apparently identical standards. See Section VIII (C)

## XVII. Pasture Management Plan

### A. Written Pasture Management Plan

The Certifier shall require each applicant Operation to submit a written pasture management plan and shall assess the correlate practice standards that ensure its efficacy at the time of inspection. Taken together, these written materials, their corresponding records and their verification by direct observation should demonstrate that the pasture management practices assure the available vegetative cover on an annual basis is sufficient to allow the Operation to meet the grazing requirements of the OPT Program.

Certifiers should generally rely on NOP Handbook: Guidance and Instructions for Accredited Certifying Agents and Certified Operations, Section I, "Guide for Organic Livestock Producers" (April 16, 2015) and NOP Handbook: Guidance and Instructions for Accredited Certifying Agents and Certified Operations, Section I, "CAP-138 Resource Inventory Supplement - Livestock Production" (April 16, 2015).

All forms and templates or written guidance provided to OPT-Certified Operations shall be submitted to OPT for review and approval.

## XVIII. Recordkeeping

### A. No Specific Additional Practices

Although the OPT Program imposes additional grazing requirements and specific limitations on the identity, quantity and frequency of feedstuffs, supplements, feed additives and vitamin products, and specific practices regarding disposition of non-compliant animals and milk, and split-Operations, the purpose, form and substance of recordkeeping is identical to that required for organic certification.

### B. Reliance on NOP Guidance

Certifiers should generally follow NOP Guidance No. 2602, "Recordkeeping" (Jul. 22, 2011). Thus, the same recordkeeping practices that are accepted by Certifier to discharge the same

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duties under the NOP are appropriate, and findings of compliance for the NOP certification, provided any additional records required by the OPT Program are maintained, are sufficient.

## C. No Prohibition on OPT Action in the Event of NOP Inaction

The absence of a specific difference between the NOP and the OPT Program does not in all cases mean the outcome of review of a recordkeeping practice will be identical. Nor does it mean that NOP acceptance of a practice or Certifier decision necessarily and in all cases means OPT acceptance of the same practice or decision. As noted in the Federalism Principles Section in this Program Manual, the OPT may act in the absence of action by the NOP on matters and questions arising under apparently identical standards. See [Section VIII \(C\)](#)

## D. Operation Reports<sup>35</sup>

Certifiers should note that OPT may require an Operation Report be filed for any or all OPT-Certified Operations.

## **XIX. Handling of Products from OPT-Certified Operations**

OPT-Certified handlers are required to maintain the integrity of products comprised of milk or meat from OPT-Certified Operations. Certifiers should use the following guidelines.

### A. Supplementation of OHP with OPT-Specific Practice Standards in 2019

At present, certified organic handlers that also handle milk or meat under the OPT Program shall be found in compliance by Certifiers, provided each OPT-Certified Operation's Organic Handling Plan ("OHP") is supplemented with specific practice standards governing the handling and processing of products comprised of agricultural ingredients from OPT-Certified Operations.

### B. Applicable NOP Provisions

The OPT-specific handling practices are not intended to be novel. Section 7 C.F.R. §205.201 requires that the OSP describe the management practices and physical barriers employed to prevent commingling of organic and nonorganic products on an organic or a Split Operation. Protective practices to prevent organic products from contacting prohibited substances that could compromise the integrity of the organic products are required under § 205.272. The same practices regarding receipt, storage, segregation, contact with non-compliant materials and commingling that govern organic Operations are sufficient to demonstrate compliance with the OPT Program, provided they are separately identified as OPT-compliant practice standards. See e.g. NOP Guidance No. 5025 "Guidance Commingling and Contamination Prevention in Organic Production and Handling" (July 22, 2011); see *also* NOP Guidance No.

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<sup>35</sup> See *Appendix A: Definitions* at 25

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11-9 “Calculating the Percentage of Organically Produced Ingredients.” (Jan. 31, 2011)

## C. OPT Program-Specific Handling Plan in the Future

In 2019, OPT will develop more specific standards for handlers and meat products. After the OPT program-specific handling standards are vetted and promulgated, each Certifier shall require these practice standards be complied with by measures described in the applicant Operation’s supplemented OHP.

## D. No Prohibition on OPT Action in the Event of NOP Inaction

The absence of a specific difference between the NOP and the OPT Program does not in all cases mean the outcome of review of a handling practice will be identical. Nor does it mean that NOP acceptance of a practice or Certifier decision necessarily and in all cases means OPT acceptance of the same practice or decision. As noted in the Federalism Principles Section in this Program Manual, the OPT may act in the absence of action by the NOP on matters and questions arising under apparently identical standards. See Section VIII (C)

## XX. Composition and Labeling of Products from OPT-Certified Operations

### A. Single-Ingredient Products

Single ingredient products composed of dairy or meat produced by, or derived from, animals on OPT-Certified Operations shall be labeled: “Certified Grass-Fed Organic Dairy [product]” or “Certified Grass-Fed Organic Meat [product].”

### B. Multi-Ingredient Products

Multi-ingredient products containing livestock ingredients from OPT-Certified Operations shall be handled exclusively by OPT-Certified Operations that process and should be labeled in accordance with the labeling content classification system used in the NOP and the placement of the above referenced labeling language shall be applied analogously to the use of the word “organic” under the NOP. See 7 C.F.R. §§301-305.

### C. “Certified Grass-Fed Organic” Products

If a multi-ingredient product is composed of 95%-99% OPT Program-compliant ingredients it may be labeled “Certified Grass-Fed Organic [ingredient described]” *provided*, the remaining content of the product must comply with organic requirements and in no case shall it contain an ingredient *in a form certified* to the OPT Program and in the *same form but not certified* to the OPT Program

### D. “Made with Certified Grass-Fed Organic Ingredients”

If a multi-ingredient product is composed of 70%-94% OPT Program-compliant ingredients it

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may be labeled “Contains Certified Grass-Fed Organic [ingredient described]” or “Made With Certified Grass-Fed Organic [ingredient described]” *provided*, the remaining content of the product must comply with organic requirements and in no case shall it contain an ingredient *in a form certified* to the OPT Program and in the *same form but not certified* to the OPT Program.

## E. Further Clarification

Additional clarification and product composition and labeling requirements and standards will be forthcoming in 2019 as the OPT program evolves. A Certifier may also contact the Program Manager for additional guidance.

## XXI. Use of the Licensed Trademarks

The requirements and governing principles for the use of the OPT Licensed Trademarks are set forth in a separate licensing agreement between the sellers of consumer-facing products and the OPT. Certifiers do not enter into licensing agreements on behalf of OPT.

## XXII. General Administrative Matters

### A. Accreditation

To be accredited to offer to Certification each applicant shall be an accredited certifying agent (“ACA”) in good standing with the National Organic Program. Each applicant ACA shall successfully complete a training program designed to ensure competence with the standards of this program. To complete the business arrangements, each Certifier shall execute a Certification Services Agreement with OPT prior to undertaking to provide Certification Services. The Agreement sets forth contractual obligations of each party and works in conjunction with the OPT Program Materials, the OPT Ancillary Materials and the Certification Service Materials. Additional details regarding

### B. Accepted Grass-Fed Certifications and Certificates in 2019

Presently valid Grass-Fed organic certificates issued by NOFA NY, Pennsylvania Certified Organic (“PCO”) and Vermont Organic Farmers (“VOF”) that bear anniversary or expiration dates prior to December 31, 2019 will be accepted by OPT, *provided* the certified Operation designated has applied to a Certifier to receive Certification under the OPT Program no later than October 1, 2019. Extensions of this deadline for up to 30-days may be submitted to the Program Manager and may be granted for Good Cause shown. Further extension is disfavored and will be granted only upon demonstration of Exceptional Circumstances.

### C. Use of OPT Licensed Trademarks

Livestock products from Operations possessing Certification or certificates described in Section (B) above, or products containing ingredients from such Operations, may bear the

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Licensed Trademarks or being marketed in a manner designating compliance with the OPT Program in 2019 if, and only if, the marketing party receives a License from OPT.

## XXIII. Complaints from Third Parties

### A. General

Each Certifier may maintain its existing process for disposition of complaints it receives from third parties regarding an OPT-Certified Operation or the Certifier itself. The following procedures should be, at a minimum, observed.

### B. Complaints Regarding Certifiers and OPT-Certified Operations

Any person may submit a complaint to a Certifier or the Program Manager alleging an OPT-Certified Operation, or a Certifier has failed to or has negligently discharged a required duty, provided that the person alleges he or she is materially and adversely affected by the actions complained of. A person may include a legal entity that is not an individual.

1. An unsigned, or anonymous complaint should generally not be accepted unless sufficient indication of its merit is apparent on the face of the complaint.
2. A Certifier may choose to forward a complaint filed against the Certifier to the Program Manager but need not do so. If the Certifier chooses not to forward the complaint, it shall provide Notice to the complainant that the complainant may appeal the final action taken by the Certifier to the Program Manager.

### C. Complaints Regarding Misuse of Licensed Trademarks or Misrepresentation of Products.

Any person may submit a complaint to a Certifier or the Program Manager alleging a person or entity is misusing the OPT Seal or misrepresenting OPT-Certified products in the marketplace. A complainant does not need to allege he or she is materially and adversely affected by the actions complained of. An unsigned, or anonymous complaint will generally not be accepted unless sufficient indicia of its merit appears on the face of the complaint. The following procedure should be observed.

1. All complaints *received* from third parties, in whatever form, should be submitted or forwarded to the Program Manager;
2. All complaints *initiated* by Certifiers or OPT-Certified Operations shall be submitted to the Program Manager in writing, be signed by the complainant and state facts alleging the misconduct with sufficient particularity to permit a meaningful investigation as well as a meaningful response by the target of the complaint.
3. All complaints will be assessed on a case by case basis unless the allegation involves a factual nexus that is shared by multiple Certifiers or OPT-Certified Operations.
4. The Program Manager will acknowledge receipt, investigate and seek any rebuttal

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information from affected parties that is reasonably available. Appropriate action will be taken, in writing, upon development and review of the fullest record possible.

## D. Confidentiality

The Program Manager shall treat each complaint received as Confidential Information<sup>36</sup> unless a failure to publicly disclose or act would immediately endanger human or animal health and wellbeing or threaten immediate and irreparable economic harm on an uninvolved third party. Confidentiality may not be appropriate on other grounds and shall be assessed on a case by case basis.

## E. Cooperation of Certifiers and OPT-Certified Operations

Certifiers and OPT-Certified Operations are required to cooperate with the Program Manager regarding any investigation. A failure to meaningfully cooperate may result in adverse consequences to the Accreditation or Certification, as appropriate.

## XXIV. Appeals of Certification Decisions

A. Each Certifier may maintain its existing process for disposition of appeals of adverse actions it takes with regard to applicants or OPT-Certified Operations. The following procedures should be, at a minimum, observed.

B. Appeals of adverse actions taken by Certifiers under the OPT Program shall be submitted in writing to the Certifier having taken the challenged action. The appeal may be shared with the Program Manager at the discretion of the Certifier.

1. The Certifier shall thereafter timely render a decision on the appeal in writing, a copy of which shall be submitted to the Program Manager; and
2. If the appealing party is dissatisfied with the outcome, it may submit an appeal of the decision to the Program Manager and shall serve a copy of the appeal on the Certifier who shall thereafter forward to the Program Manager any portions of the Certification and appeal record necessary to the proper disposition of the complaint; and
3. If the Certifier shares the substance of the appeal with the Program Manager before disposition, it shall waive any claim hereunder that the Program Manager may not hear the appeal.

C. Appeals of adverse Accreditation decisions taken by the Program Manager shall be directly submitted, in writing, to the OPT-Program Manager.

D. Examples of adverse actions that may be appealed include: 1) proposed suspension of

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<sup>36</sup> See Appendix A: Definitions at 12

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Certification or Accreditation; 2) proposed revocation of Certification or Accreditation; 3) denial of Certification or Accreditation; 4) combined Notice of noncompliance and proposed suspension or revocation; 5) cease and desist Notice; 6) denial of reinstatement; and 7) failure to properly discharge a complaint lodged against the Certifier. This list is not exhaustive and is subject to change.

## **XXV. Petitions**

### A. Variance.

Any OPT-Certified Operation, or any Certifier may petition the Program Manager to grant a variance from any OPT Program provision on facts specific to that party or as it is generally applied to each certified Operation affected by the standard to which the variance request is directed. The Program Manager shall prepare a summary of the request for submission to the program steering committee for review and decision. Variance requests require submission of clear and convincing evidence of the need for the variance. Petitioners for variance should consider the procedures and grounds set forth in NOP Guidance No. 2606 (Nov. 20, 2015) for assistance.

### B. Program Amendment.

Any OPT-Certified Operation, or any Certifier may petition the OPT to amend any standard in its program or add or delete any standard. Petitions to amend in the foregoing manner shall include facts generally applicable to every certified Operation under the program and state with specificity the proposed alternative and the consequences of any failure to act. The Program Manager shall prepare a summary of the request for submission to the program steering committee for review and decision.

### C. Submission.

Petitions for variance or program amendment shall be submitted through the Program Manager's web portal and shall state with sufficient particularity the grounds for granting the variance or for amending the standards. Each petitioner shall include a statement that to my best knowledge and belief:

1. This petition includes all information and views upon which the petition relies; and
2. this petition includes representative data and/or information known to the petitioner which are unfavorable to the petition; and
3. I have taken reasonable steps to ensure that any representative data and/or information which are unfavorable to the petition were disclosed to me.
4. If I received or expect to receive payments, including cash and other forms of consideration, to file this information or its contents, I received or expect to receive

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those payments from the following persons or organizations: Company A.

5. I verify that the foregoing is true and correct as of the date of the submission of this petition.

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## Appendix A

### DEFINITIONS

1. “Accreditation” means a determination made by OPT that a Certifier is eligible, competent and presently capable of performing Certification Services under the terms and conditions of the OPT Program Materials, the OPT Ancillary Materials, and may in some instances refer to Certifier’s status with the USDA/NOP.
2. “Application” means a document submitted to a Certifier by an Operation that contains information regarding the applicant Operation that initiates the process for determining Certification and is sufficient for a Certifier to conclude the Operation is eligible under the OPT Program.
3. “Boot stage” means part of the flowering phase of plant growth, defined as the time when the seed head emerges from the sheath of the flag leaf.
4. “Brassicas” means a genus of plants in the mustard family (Brassicaceae). The members of the genus are informally known as cruciferous vegetables, cabbages, or mustard plants.
5. “Browse” means a leaf and twig growth of shrubs, woody vines, trees, cacti, and other non-herbaceous vegetation available for animal consumption.
6. “Certificate of Compliance” means a document developed by OPT that identifies an OPT-Certified Operation and that may contain marks of the Certifier, if approved by OPT.
7. “Certification” means an annual determination by a Certifier that an eligible Operation is in present compliance with the requirements appearing in the OPT Program Materials and applicable OPT Ancillary Materials for dairy or meat livestock and is reasonably certain to remain in compliance during the twelve-month period designated on the Certificate of Compliance.
8. “Certification Service Materials” means the applications, forms, templates, checklists, inspection documents, electronic data generating and storing methods, used in providing Certification Services, that are produced by Certifier and approved for use by OPT.
9. “Certification Services” means the activities conducted by the Certifier to render a certification.
10. “Certifier” means a certifying agent of the USDA/NOP that has received Accreditation from OPT and is authorized to conduct Certification Services on OPT’s behalf.

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11. "Commercially Unavailable" means an OPT-Certified Operation demonstrates to the Certifier that it cannot timely purchase an animal with the Operation's Animal Attributes.
12. "Confidential Information" means all information acquired by Certifier or Program Manager in the performance of Accreditation or delivery of Certification Services that is required by the NOP to be maintained as confidential, excluding information that is required to be disclosed to NOP.
13. "Dairy Livestock Production Operation" means a certified grass-fed organic operation with a milking parlor where a least one lactating animal is milked.
14. "De Minimis" means an amount or action that is below the threshold of programmatic concern.
15. "Exceptional Circumstances" means those circumstances that generally constitute force majeure, such as including but not limited to, acts of God, compliance with law, storm, flood, terrorism, earthquake, war, rebellion, revolution or strike or any other event, happening or occurrence beyond the reasonable control of the affected party"
16. "Farm Herd List" means a list of all ruminant animals at the OPT-Certified Operation that is routinely updated.
17. "Forage cubes or pellets" means desiccated and compressed forages
18. "Forbs" means flowering plants that are not grasses or sedges. Some examples include clovers, alfalfa, and milkweed.
19. "Good Cause" means that a good faith attempt to complete a required action in a timely manner failed, enlargement of time is appropriate to serve fundamental fairness and such enlargement will not substantially impair the interests of the OPT Program.
20. "Grass(es)" means graminoids, monocotyledonous plants with narrow leaves growing from the base.
21. "Legumes" means plants of the pea or pulse family, many of which are recognized for their ability to fix atmospheric nitrogen in the soil.
22. "Licensed Trademarks" means the name(s), logo(s) and service mark(s) owned and used by OPT that are referred to in Section IX of this Agreement.
23. "Notice" means information sufficient to ensure the party receiving it has actual knowledge of a requirement or duty.
24. "Operation" means a producer engaging in organic production or a handler operating a handling operation as defined in 7 C.F.R. §205.2. and that seeks Certification under the OPT Program.
25. "Operation Report" means information relating to a single certified operation that includes but is not limited to applications, inspection reports, certification checklists, reviewer or

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review committee scoresheets, and other data typically used or deemed necessary to substantiate a certification decision in accordance with the standards applicable to such decisions under 7 C.F.R. Part 205.

26. "Operation's Animal Attributes" means a list of attributes of the animals at the operation that are set forth in the Application and may include but is not limited to, breed, age, health, replacement transport time, body score, disease/illness profile, source location, performance history, etc.
27. "OPT Ancillary Materials" means all materials or methods developed or used by OPT to accredit Certifier, to administratively manage the OPT Program, including the Certificate of Compliance, and any related applications, forms, checklists and data submission templates prepared by OPT that assist Certifier in performing Certification Services including those materials to designate and authorize the use and cessation of use of OPT's Licensed Trademarks.
28. "OPT-Certified Operation" means a producer engaging in organic production or a handler operating a handling operation as defined in 7 C.F.R. §205.2. that has received Certification and is presently in good standing.
29. "OPT Program" means the current OPT livestock production and handling standards.
30. "OPT Program Manual" means a document that guides parties in implementing, applying, and complying with the current requirements of the OPT Program.
31. "OPT Program Materials" means the current livestock production and handling standards and OPT Program Manual together.
32. "OPT's Intellectual Property"—means all intellectual and industrial property rights associated with or comprised in the OPT Program Materials and Ancillary Materials as defined herein, including but not limited to all written works, training materials, manuals, instructions, protocols, designs, illustrations, photographs, inventions, trade secrets, ideas, know-how, concepts, methods and data gathering and assessment techniques.
33. "Organic" has the same meaning as that set forth in 7 C.F.R. §205.2.
34. "Program Manager" means an independent, contracted professional entity that develops and implements the current OPT Program Materials and Ancillary Materials.
35. "Small grains/cereal" means cultivated plant that produces seeds that come from grasses such as wheat, millet, rice, barley, oats, rye, triticale, flax and sorghum.

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36. "Split Operation" means an Operation that raises livestock for meat or meat products that is operated in conjunction with an OPT Certified Operation.
37. "Transition" means a 90-day period of time during which an applicant Operation complies with the OPT Program but has not yet received Certification; this term may be applied to a particular animal as well as to the Operation.

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## **Appendix B**

NOP Handbook: Guidance and Instructions for Accredited Certifying Agents and Certified Operations, *Section I*, "Guide for Organic Livestock Producers" (April 16, 2015); *Section I*, "CAP-138 Resource Inventory Supplement - Livestock Production" (April 16, 2015)

NOP Guidance No. 2615: "Organic System Plans, Organic System Plan Updates, and Notification of Changes" (Dec. 16, 2013)

NOP Guidance No. 5025: "Guidance Commingling and Contamination Prevention in Organic Production and Handling" (July 22, 2011)

NOP Guidance No. 5030: "Evaluating Allowed Ingredients and Sources of Vitamins and Minerals For Organic Livestock Feed" (March 4, 2013)

NOP Guidance No. 5031: "Certification Requirements for Handling Unpackaged Organic Products" (Jan. 22, 2014)

NOP Guidance No. 2602: "Recordkeeping" (Jul. 22, 2011)

NOP Instruction No. 2603: "Certificates" (Sept. 3, 2013)

Please see the Pasture Guidance series NOP 5017 in the NOP Program Handbook for detailed information regarding pasture access and management.