

Q&A's on the Aurora Consent Agreement

1. What prompted AMS to take this action?

A complaint was filed against Aurora Organic Dairy (Aurora) in November, 2005, alleging that Aurora did not have enough pasture for their dairy animals. When AMS' National Organic Program (NOP) investigated, it found several shortcomings. As a result, on April 16, 2007, AMS sent a Proposed Notice of Revocation to Aurora, alleging several violations of the NOP regulations at its Platteville, CO facility.

2. Why did AMS take this action against Aurora?

Based on the investigation of Aurora, a number of alleged violations or inconsistencies with the NOP regulations were identified by AMS. Especially important were concerns about adequate access to pasture and proper transitioning of dairy animals to organic status at Aurora's Platteville, CO, facility. These and other matters are addressed specifically in the consent agreement that AMS and Aurora have signed, and will be addressed through revised business plans, called organic systems plans (OSP's) that are required by the consent agreement to be filed by Aurora for its facilities.

3. What are the terms of the consent agreement signed by Aurora?

Under the terms of the agreement, to maintain its status as a certified organic dairy livestock operation, Aurora must file new organic systems plans for certain of its operations to address all identified inconsistencies between those plans and the NOP regulations. Specifically, under the terms of the agreement, Aurora committed to the following:

- Place lactating and dry cows on daily pasture during the growing season at its Platteville, CO, facility, which typically runs from May 1 through September 30 (this provision makes clear that lactation is not a stage of production exempt from access to pasture);
- Reduce herd size to specified stocking rates appropriate for the available pasture at its Platteville, CO, facility;
- Ensure that all new cows brought into its Platteville, CO, facility are organic from the last third of gestation;
- In light of the inappropriate use of two methods for converting dairy cows to organic status, remove from its Platteville, CO, facility all dairy cows that were transitioned under the "80-20" provision of the NOP regulations;

- Effective September 7, 2007, stop marketing milk as “organic” from cows at its Platteville, CO, facility that were transitioned to organic status under the “80-20” provision;
- Not to seek to renew the organic certification for its Woodward facility, located in Greeley, CO.
- Amend the organic system plan for its Dublin, TX, facility to require written agreements with suppliers of animals that provide for the proper transitioning of animals to organic status, as well as the certification of those suppliers by an accredited certifying agent.
- Submit to inspection of its Platteville, CO facility, by AMS.

4. Why didn’t AMS revoke Aurora’s certification?

Compliance with NOP regulations is one of AMS’ foremost priorities. Under the consent agreement Aurora agreed to address all of the alleged violations identified by AMS and will be subject to a one-year probationary review period, during which compliance with the agreed changes will be assessed. Had this matter proceeded to litigation, it may have taken several years before AMS could have taken action on the alleged violations by Aurora.¹

5. Why does Aurora continue to operate as a certified dairy operation?

Aurora’s organic certification continues under the consent agreement as long as the terms of the consent agreement are met over the one-year probationary review period and Aurora otherwise complies with requirements of the NOP regulations and the Organic Foods Production Act (OFPA).

6. What happens if Aurora fails to abide by the consent agreement?

If Aurora fails to abide by the terms of the consent agreement, AMS can withdraw from the consent agreement and proceed again with the proposed notice of revocation.

7. Is a consent agreement or settlement an unusual or unprecedented outcome?

¹ Under NOP regulations, an organic operation served with a Proposed Notice of Revocation has the right to appeal to the AMS Administrator. If the appeal is denied, AMS must then file a complaint that is adjudicated before a USDA administrative law judge (ALJ). Either party may appeal the ALJ decision to USDA’s Judicial Officer. If AMS prevails throughout this process, the organic operation has the right to appeal to the federal courts. It is only after the legal process is completed that AMS can take action against the organic operation to revoke its certification.

No. NOP and other USDA regulatory programs agree to the settlement of enforcement matters if they are deemed to be in the best interests of those programs.

8. How long was the investigation that resulted in this outcome?

The investigation took over a year.

9. Why was a one-year probationary review period selected?

A year was considered an appropriate period of time to observe compliance with the terms of the agreement, to address all of the alleged violations, and to ensure compliance with the NOP regulations and OFPA.

10. How will NOP conduct the additional reviews of Aurora?

NOP will conduct unannounced visits, inspections, and audits of Aurora's facilities.

11. What effect does this action have on the proposed pasture regulation?

This action has no effect on the proposed pasture regulation.

12. Did NOP take any enforcement action against Aurora's certifying agent—Colorado Department of Agriculture (CDA)?

Yes. As a result of the investigation, CDA also agreed to make changes in its operation by hiring additional staff and attending AMS/NOP training.

13. What effect will this settlement have on the organic milk market?

Consumers can be assured that the NOP regulations are enforced, and that milk sold in supermarkets as organic is correctly labeled under the law.

14. How does Aurora market its milk, and to whom?

Aurora markets its milk under store or other private labels to various retail outlets throughout the country.

15. Are there other investigations underway?

We do not comment on whether we are engaged in on-going investigations.

16. Who filed this complaint?

Cornucopia, a grassroots organization, filed the complaint.

17. What are the requirements for dairy animals and milk to become “organic” under the NOP regulations?

For milk to be considered organic, it must be produced by a dairy animal that has been managed organically for at least 12 months prior to organic milk production. The meat from a dairy animal can not be sold as organic, however, unless it was under organic management from the last third of gestation – a more stringent method of converting dairy animals under the NOP regulations.

An adaptation of the 12 month conversion process also has been permitted under the NOP regulations for transition of whole herds (known as the “80/20 whole herd conversion method”). If this method was chosen, however, it required that animals added to the herd only be produced under organic management from the last third of gestation. Aurora is alleged to have improperly added cows to its Platteville, CO, facility that had been converted through the standard 12-month conversion process.

18. What are the pasture requirements under the NOP regulations?

The NOP regulations require that all ruminant animals have access to pasture, and that all animals receive organic feed, including feed from pasture. Pasture is a required source of nutrition under the NOP regulations, which also require that animals be provided access to the outdoors so that their living conditions accommodate their natural behavior.

Before the settlement, Aurora treated lactation as a reason to deny access to pasture.

19. Were there terms agreed to under the settlement that go beyond the NOP regulations?

Yes. Aurora agreed to major restructuring in its operations that go beyond those required in the NOP regulations – requiring that all new dairy animals at its Platteville, CO, facility will be organic from the last third of gestation, assuring that daily access to pasture will be provided during the growing season, and that maximum animal stocking rates are provided.

20. Why was no civil penalty imposed on Aurora in this case?

AMS’ first priority, to ensure compliance with the NOP standards, has been accomplished through the consent agreement. The full legal process would have been lengthy and subject to the uncertainties of litigation. Through the consent agreement, in addition to ensured compliance, AMS achieved several results that are of benefit to the NOP. For example, a one-year probationary review period will be imposed, during which compliance will be monitored through enhanced

reviews, and enforcement will be reinitiated if the agreement is not complied with. Most importantly, however, Aurora has agreed to proceed now with the necessary corrective actions to ensure that organic milk is correctly produced and labeled in the market for consumers who pay premiums for these products.

21. Did USDA dismiss the complaint against Aurora?

No. The complaint was not dismissed. USDA's Agricultural Marketing Service issued a Notice of Proposed Revocation on April 16, 2007, and Aurora sought to settle the matter by signing the consent agreement on August 23, 2007. By agreeing to make major changes in their operations and agreeing to additional oversight during a one-year probationary review period Aurora is able to remain a certified organic operation. If Aurora does not abide by the agreement during that time, AMS may withdraw from the agreement and could revoke the organic certification for Aurora's Platteville, CO, plant.