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Agricultural Marketing Service
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National Organic Program (NOP)—

Access to Pasture (Livestock); Proposed Rule – Public Comment
[Docket No. AMS–TM–06–0198; TM–05–14]
December 23, 2008

The Organic Trade Association (OTA) is pleased to have the proposed rule on access to pasture published and supports the action being taken by AMS to “ensure that NOP livestock production regulations have sufficient specificity and clarity to enable AMS and Accredited Certifying Agents to efficiently administer the NOP and to facilitate and improve compliance and enforcement”, and “to satisfy consumer expectations that ruminant livestock animals graze pastures during the growing season”.

We thank you for the opportunity to provide comment and OTA thanks the USDA for the 5 listening sessions held.

Since its founding in 1985, OTA has been the leading voice for the organic business community. OTA has 1,700 members across all parts of the supply chain, including organic farming, processing, distribution, and the retail sector, for food, organic textiles and personal care products. The dairy and slaughter livestock members of the OTA represent most of the organic meat, milk and dairy products produced and sold across the United States. OTA members include organic farms, suppliers, processors, certifiers, retailers and local, regional and national farmer groups.

The following comments represent OTA’s input to the Secretary. While individual trade association members may have divergent views on some specific issues, overall three themes emerged as universal concerns:

1) Significant changes need to be made to the regulation as written to both meet the above mandate and minimize the burden of the collection of information on those affected, while collecting sufficient information to demonstrate compliance with the final rule. OTA and its members support the objectives that **organic livestock operations provide year-round access to the outdoors when appropriate and that organic ruminants to receive at least 30 percent of ration from grazing during the grazing season.** Additionally, industry consensus supports clarification that livestock feed must be **certified organic** and that pasture be treated as a crop with a pasture management system in place that protects soil and water resources. OTA identifies specific changes to the proposed rule that do not sacrifice these core principles and still provide clarity necessary for strong enforcement of organic standards without placing an **undue burden on producers.**

2) Many provisions in the regulation are far too prescriptive. The final rule must simplify the record keeping requirements. The use of the Organic System Plan (OSP) should be reinforced in the regulation. This would help maintain both consistency of

enforcement and the essential flexibility needed to apply the rules to a wide range of ecologically disparate operations. For example, different methods of calculating Dry Matter Intake (DMI) are more appropriate for different organic systems and conditions. Certifiers should confirm that producers have adequate record keeping for determining dry matter intake on their operation. The OSP is the appropriate vehicle **to document compliance, as determined by the certifier and producer in consultation, rather than dictating one specific method.** Similarly, methods of maintaining soil and water quality in pasture areas should be determined by site specific ecological and management considerations. Use of fencing or buffer areas are some tools for compliance, but are not appropriate for all situations.

A rule can't anticipate every scenario. Thus, rather than burden rule making with exceptions for confinement such as during 4-H shows and preventative health care procedures like hoof **trimming, the rule should clarify important principles and set expectations for OSPs and certifier's determination of an organic entities compliance.** An emphasis on performance standards versus practice standards is a way to reduce the need for detailed rules about what specific practices should be used. Compliance can be demonstrated by identifying measurable objectives to be achieved by an Organic System Plan.

3) Differences between dairy and meat management are insufficiently addressed in this proposal. Significant differences exist between dairy and meat operations. Organic meat is relatively small and a less developed category than the organic dairy sector (2% and 16% of total organic sales respectively), but it is the fastest-growing sector of the organic industry, (29% growth rate).¹ It is important to make the necessary corrections to the proposed rule concerning organic meat producing operations so that this sector can continue to grow. The final rule should provide sufficient clarity for enforcement of the rule on these distinct and diverse operations as well as meet consumer expectations for organic operations and products.

The consumer data referenced in the proposed rule preamble are specific to the dairy sector. In fact, both the Natural Marketing Institute study and the Whole Foods market survey specifically address organic dairy products. In contrast, animals raised for meat may spend their entire lives on pasture, yet producers would be required to maintain extensive documentation of rations provided based on DMI. Additionally, many consumers demand choice grades of organic beef.² Beef producers who cater to this market may choose to feed more than grass or pasture during finishing.

OTA's comments address the perspective of the organic slaughter livestock sector of the industry while maintaining support for the core principles of the proposed rule. OTA hopes the detailed comments and language recommendations are helpful in this regard.

OTA encourages the NOP to publish a final rule that recognizes the differences in dairy versus meat production operations and considers consumers' expectations for taste and quality of organic meats. A final rule should accommodate production practices that meet the market demand for both organic grass fed beef and organic grain finished beef, while

¹ Organic Trade Association's 2007 Manufacturers Survey.

² Consumer sensory acceptance and value for beef steaks of similar tenderness, but differing in marble level, *Journal of Animal Science*, 2004 82:3294-3301.

preserving the core organic principle that organic livestock should not be raised in total confinement and production practices must support animals natural behaviors. OTA believes that it would be unhealthy for the organic industry if animals are raised in ways that are inconsistent with consumer expectations for organically produced food.

Following are OTA's specific recommendations for changes to the rule, including supporting data and rationale for the suggested language.

§205.2 Terms defined

OTA supports all portions of the definitions section of the proposed rule with the exception of those specifically addressed below. OTA especially welcomes the inclusion of the word "pasture" in the definition of "crop", and feels there is a clear need for changes in the definitions section regarding the distinction between the "growing" and "grazing season", the conditions qualifying as "inclement weather" and the inclusion of "sacrificial pasture".

OTA recommends removing the definitions for *dry lot* and *feed lot*. OTA recognizes the need to maintain some area(s) where animals have access to outdoors during times of allowed exemption from pasture. Well managed outdoor spaces have diverse regionally based names such as barn yards, corrals, feeding pads, dry lots and other high use areas. These areas may provide temporary housing and access to the outdoors during recognized exemptions but should not be used in place of access to pasture.

OTA recommends replacing *growing season* with *grazing season*. In many regions the growing season as determined by first and killing frost may not exactly align to the grazing season in terms of providing animal nutrition and preserving soil and water resources. For example, the actual grazing season wouldn't begin until after the last frost, as the grass needs to grow, and usually extends beyond the first frost of the season in many regions. A certified entity's "grazing season" should be identified in their OSP.

Recommended language:

The *grazing season* is when pasture plants are available, due to natural precipitation or irrigation, for ruminants to graze. Grazing season dates may vary because of mid-summer heat / humidity, significant precipitation events, floods, hurricanes, tornado, and droughts. Grazing season may be extended by the grazing of residual pasture as agreed in the organic systems plan. Due to weather, season, and climate, the grazing season may or may not be continuous. The grazing season for organic production shall be not less than 120 days.

OTA recommends changes to the definition of *inclement weather*. The suggested changes to the definition of *inclement weather* reflect the view that animals should not be 'regulated' outdoors when conditions can cause injury, even if the harm is not permanent. OTA believes that this is certainly consistent with consumers' expectations regarding animal well-being and requirements in the rule for accommodating the health of the animals.

Recommended language:

Inclement weather. Weather that is violent, or characterized by temperatures (high or low), or excessive precipitation that can cause physical harm to a given species of livestock. Production yields or growth rates lower than the maximum achievable do not qualify as physical harm.

OTA recommends deleting the definition of *killing frost*. The replacement of *grazing season* for *growing season* eliminates the need for a definition of *killing frost* in the final rule.

Recommended language:

Delete entire definition for killing frost.

OTA recommends clarification to livestock definition. OTA requests that USDA make clear, in the final rule, that any livestock such as equine draft animals, plow oxen, breeding bulls, that are not sold, labeled or represented as organic, not be required to be organically managed on an organic operation.

OTA recommends deleting the definition of *sacrificial pasture*. The use of sacrificial pastures is a management practice that intends to increase livestock access to pasture during wet periods and the non-grazing season and can be incorporated on some operations that have the proper soil resources, environmental conditions, and access for livestock. However, not all operations have soils suitable to be used during wet conditions. OTA supports a performance standard of pasture management that preserves soil and water resources, and the overall productivity of an operation's pasture "crop" without limiting livestock access to the outdoors.

Recommended language:

Delete entire definition of *sacrificial pasture*.

§ 205.236 Origin of livestock

While OTA recommends the removal of the entire origin of livestock section, **OTA supports immediate and swift *full origin of livestock rule making* to clarify this uneven and unfair portion of the regulation.**

Recommended language:

Delete the entire section related to origin of livestock.

§ 205.237 livestock feed

OTA supports the proposed rule's clarification that organic livestock feed must be not only organically produced, but from operations certified as organic by an accredited certification agency. We also appreciate the clarification that agricultural ingredients in feed additives and supplements must be certified organic. OTA supports that during the grazing season livestock receive rations with not more than 70 percent of the herd's average daily intake of dry matter from feed as opposed to pasture. OTA also recommends changes to the section on livestock feed that replace *growing season* with *grazing season* as the defining term, and that are not overly prescriptive in the manner of DMI substantiation.

OTA recommends the following changes to reflect the emphasis on **grazing rather than growing season** as well as recommended changes to accurately reflect exemptions for temporary confinement.

Recommended language:

Amend § 205.237 (b) to read: (8) Prevent, withhold, restrain, or otherwise restrict ruminant animals from actively obtaining feed grazed from pasture during the grazing season, except for conditions as described under § 205.239(b).

Amend § 205.237 (c) to read: During the grazing season, producers shall provide not more than an average of 70 percent of a ruminant's dry matter demand from dry matter fed (dry matter fed does not include dry matter grazed from vegetation rooted in pasture). Producers shall, keep records as outlined in their OSP and agreed to by their certifier so as to demonstrate compliance:

OTA recommends that the final rule be less prescriptive in terms of required methods for determining dry matter intake, but rather reinforce the OSP and the importance of documenting feed rations, changes to feed rations and methods used to determine dry matter intake. In contrast to dairy animals, animals raised for meat may spend their lives on pasture, in this case producers should not be required to calculate for dry matter intake.

Recommended language:

Amend § 205.237(d) to read: Producers shall, as part of the Organic Systems Plan, document all feed rations for all species and classes of animals. For ruminants, documentation shall be maintained of changes that are made to all rations throughout the year in response to seasonal grazing changes such that records can verify the feeding requirements of 205.237(c).

§ 205.239 livestock living conditions

OTA supports the objectives of section 205.239 in requiring that livestock living conditions be maintained in a way that accommodates the health and natural behavior of animals. OTA supports the NOSB recommendation from 2005 and also strongly recommends an exemption for the finishing of organically raised meat. **OTA recommends changes to the final rule that recognize that exemptions to year-round access to the outdoors and pasture are occasionally necessary in order to protect animal health and welfare.** Additionally OTA recommends portions of the livestock living conditions that are overly prescriptive be stricken and moved to their appropriate position as essential parts of an OSP as developed by the producer, agreed to by the certifier.

OTA recommends changes to section 205.239 (a) (1-3) that delineate species differences and are consistent with prior recommended changes.

Recommended language:

Amend § 205.239(a) to read:

(1) Year-round access for all animals to the outdoors except as otherwise provided in paragraph (b) of this section: shade and shelter , exercise areas, fresh air, water for drinking (indoors and outdoors) and direct sunlight, suitable to the species, its stage of life, the climate, and the environment.

(2) For all ruminants, sufficient provision of pasture to meet the requirements of 205.237, except as otherwise provided in paragraph (c) of this section, for: (i) throughout the grazing season; and (ii) Access to the outdoors throughout the year, including during the non-grazing season. Well managed high use areas such as barn yards and corrals must be managed to maintain or improve soil and water.

(3) Appropriate clean, dry bedding as necessary. When crop matter typically fed to the animal species is used as bedding, it must comply with the feed requirements of §205.237.

OTA recommends the following specific changes to the section on livestock living conditions under which livestock may be temporarily denied access to the outdoors.

These changes better capture the range of circumstances under which animal welfare and soil and water management require temporary exemption.

Recommended language:

Amend § 205.239 (b) to read: The producer of an organic livestock operation may temporarily deny an animal access to the outdoors because of the following conditions:

(1) inclement weather, (2) The animal's stage of life, (3) conditions under which the health, safety, or well being of the animal could be jeopardized; (4) risk to soil or water quality, or (5) preventative health care procedures.

OTA recommends the following specific changes to the section on livestock living conditions under which livestock may be temporarily denied access to pasture. These changes better capture the range of circumstances under which health maintenance requires temporary exemption.

Recommended language:

Amend § 205.239 (c) to read:

(2) One ***week at the end of a lactation for dry off, three*** weeks prior to parturition (birthing), parturition, and up to one week after parturition;

(4) delete / remove

(5) In the case of fiber bearing animals, for short periods for shearing; and

(6) In the case of dairy animals, for short periods daily for milking. Milking must be scheduled in a manner to ensure sufficient grazing time to provide each animal with an average dry matter intake from grazing of not less than 30 percent throughout the growing season. Milking frequencies or duration practices cannot be used to deny dairy animals pasture.

(7) In the case of breeding animals may be temporarily confined for artificial insemination.

OTA recommends changes to the proposed rule to allow for the finishing of organic meat products. Many consumers demand choice grades of organic beef. Beef producers who cater to this market may choose to alter the livestock's rations during finishing. OTA's recommends changes, consistent with the 2005 NOSB recommendation, that address the needs of the organic meat sector while maintaining support for the core principles of the organic, that organic livestock should be raise in a way that maintain year round living conditions which accommodate the health and natural behavior of animals as stated in § 205.239 (a).

Amend 205.239 (c) by adding:

(8): Except that, ruminant slaughter stock during the finishing period, not to exceed 120 days.

OTA recommends the removal from the livestock living conditions standard of (d)(1-6.) These issues are addressed elsewhere in the statute 205.238 and 205.239, livestock health practice standard and livestock living conditions respectively. Inclusion here represents an area where the proposed rule is overly prescriptive and performance rather than practice standards would be most helpful to organic operations and certifiers.

Recommended language:

Remove/ delete § 205.239(d) (1-6)

OTA recommends changes to the livestock living conditions standard regarding limiting risk to soil and water quality. Again this area is better served with performance rather than practice standards. The overly prescriptive approach in the proposed rule could have unintended consequences. For instance requiring fencing of waterways under all conditions and across all operations could limit wildlife access to their source of drinking water in rangeland operations. The proposed rule a written could conflict with the state and local codes that govern water quality, and manure management. Many producers work with NRCS in their states to develop comprehensive conservation plans that could in some instances conflict with the requirements of such detailed practice standards rather than supplement and reinforce a more appropriate performance standard.

Recommended language:

Amend § 205.239 (f) to read: The producer of an organic livestock operation must manage outdoor access areas, including pastures, in a manner that does not put soil or water quality at risk.

§ 205.240 Pasture practice standard

OTA supports much of the pasture practice standard with a few exceptions. In the pasture plan description OTA recommends referencing and reinforcing the role of the OSP again to move away from being overly prescriptive, but the performance basis of the proposed rule is very welcome. The single are of greatest concern in the pasture practice standard is the inclusion of the sacrificial pasture requirement. OTA recommends removing this reference.

The following specific recommendations make consistent the recommended changes of using grazing season rather than growing season, and reinforce the role of the OSP.

Recommended language:

Amend § 205.240(c) to read:

(2) Cultural practices, including but not limited to varying the crops and their maturity dates in the pasture system, to be used to ensure pasture of a sufficient

quality and quantity is available to graze throughout the grazing season and to provide all ruminants under the organic systems plan with an average of not less than 30 percent of their dry matter intake from grazing throughout the grazing season;

(3) Remove/ Delete

(6) The location and types of fences and the location and source of shade and water as necessary and as described in 205.239 livestock living conditions;

(7) the soil fertility, seeding, and crop rotation systems as necessary and as described in the OSP;

(8) the pest, weed, and disease control practices as necessary and as described in the OSP;

(9) the erosion control and protection of natural wetlands, riparian areas, and soil and water quality practices as necessary and as described in the OSP;

(10) Pasture and soil sustainability practices as necessary and as described in the OSP and;

(11) Restoration of pastures practices as necessary and as described in the OSP.

For the reasons outlined above and in the definitions section of our proposed rule comments, OTA recommends the removal of the entire section on sacrificial pasture.

Recommended language:

Delete/ Remove § 205.240(d)(1-4)

§ 205.290 Temporary variances

OTA supports sections 205.290 as written.

In Conclusion:

The NOSB's recommendation on "access to pasture" has been well understood by the organic dairy sector for some time. We urge the USDA to recognize that predictability in organic standards is critical for the health of the organic industry. The proposed rule, **with OTA's recommended changes**, will not upend the industry. But to adopt the proposed rule as written with little or no change in regard to the meat industry is untenable. OTA asks the USDA to adopt a final rule that has simplified record keeping requirements determined by the producer and their certifier, and encourages the use of the Organic System Plan instead of overly prescriptive regulatory language to provide clarity necessary for enforcement.

