

**Statement Regarding Proposed Amendments
to the Organic Foods Production Act**
September 30, 2005

The following document represents the best thinking of the undersigned NGOs in a response to an amendment to the Organic Foods Production Act (OFPA) proposed by the Organic Trade Association (OTA) and other industry groups during the recent consideration of the Senate Agriculture Appropriations Bill.

At the outset, we wish to be clear that we are not seeking to open OFPA at this time and most certainly not in this way. However, when there is an attempt such as this current OTA attempt to open the law, our collective responsibilities are to ensure that each and every regulatory and/or legislative change to the OFPA or NOP regulations results in changes that strengthen and protect organic integrity and clearly meet consumer expectations.

Our overall position remains that any changes to the OFPA should be first vetted through a public and transparent process to build wide spread community support and that then, and only then, should such legislative reforms be considered. We strongly oppose any changes to OFPA through “riders” on appropriations bills or other such “backdoor” processes. We all know that a unified, participatory and transparent process best achieves our common goals.

We also firmly believe that demonstrating our attempts to exhaust United States Department of Agriculture (USDA) regulatory remedies to the Harvey case is not only preferable as a first step but also creates opportunity to avoid possible unwelcome amendments to the OFPA. We have previously submitted such a regulatory petition for new rulemaking to USDA to accomplish this. We have sought and await the USDA and OTA responses.

We continue to seek the opportunity to have a comprehensive public dialogue regarding any and all OFPA changes through a transparent public process. However, since OTA and other companies have forced this legislative approach without advice or consent from the rest of the broader organic community, we are honor bound to respond and to ensure that this rider does not weaken the existing OFPA but strengthens it.

Please review the following document which:

- Outlines the OTA legislative amendment language to the OFPA;
- Provides NGO analysis; *and*
- Proposes NGO legislative responses, which if enacted, would actually improve the current OFPA and ensure continued public support of the National Organic Program

Signed,

Center for Food Safety
Rural Advancement Foundation International - USA
National Organic Coalition
Beyond Pesticides
National Cooperative Grocers Association
National Campaign for Sustainable Agriculture, Organic Steering Committee

OFPA AMENDMENTS
Synthetics
7 U.S.C. §§ 6510, 6517, 6518

NGO Proposed Amendments

- Amend 6510(a)(1) to ensure that the National List process for synthetics in processing and post-harvest handling is applied to all synthetics substances, including processing aids, additives, and food contact substances, and not just “ingredients.”

The Act was passed with the National List process established to ensure oversight of any synthetic substance allowed in organic production. The NOSB has consistently held that, “Although incidental food additives may not appear in the ingredient statement of foods labeled as organic foods, these additives must be subjected to the same National List evaluation process as other processed food ingredients.” (Austin, 1995).

Further, in Harvey, the court specifically recognized that the National List process is for all synthetic substances and not a subset of synthetics such as “ingredients.” See e.g. Harvey, 396 F.3d 28, 32 (1st Cir. 2005) (“Exceptions to the Act’s general prohibitions on synthetic substances appear on a National List of approved substances for organic production” (emphasis added)); (“The Act contains detailed guidelines for the inclusion of substances on the National List.” (emphasis added)).

By proposing to eliminate current 6517(c)(1)(B)(iii) and failing to replace it with a subsection that allows for synthetic substances in handling, the OTA proposed amendment ends up relying only on a newly amended 6510(a)(1) as the authority to allow approved synthetics in processing. The end result would be that synthetic “ingredients,” as provided in the amended 6510(a)(1), would go through the National List process for handling, but other synthetic substances used in handling may not be subjected to the same process. This is not a return to status quo and would provide support in the statute for the USDA’s December 2002 controversial policy that exempts synthetic processing aids and food contact substances from the need for approval on to the National List. By amending 6510(a)(1) to use the word “substance” instead of “ingredient” the Act would ensure that if handlers would like to use any of the 500+ food contact substances or other processing aids such synthetics could be used only if they have been reviewed by the NOSB and approved for inclusion on the National List.

OTA Response: Amend the Act where appropriate to add “The USDA is directed to undertake notice and comment rulemaking to determine the treatment that synthetic food contact substances shall have under the National List, including development of categories appropriate to organic products and the extent of review necessary to serve public interest.”

NGO Counter Response: There are several things unacceptable about OTA’s response. First, the OTA has not explained why it does not support the long-established NOSB policy concerning processing aids, additives and food contact substances. Second, the USDA already

has a policy on this issue that suggests the end result of the proposed rulemaking is predetermined. Third, the OTA response appears to confuse the proposed addition of categories related to all synthetics contained in the NGO proposed amendment to 6517(c)(1)(B)(iii) with a suggestion that categories be created only for food contact substances.

The term “food contact substance” is a term of art created by the FDA to provide expedited review of food additives that are deemed not to have a technical function in the final food product (i.e. a processing aid). Any additive previously allowed in food by the FDA can be considered a “food contact substance” if the manufacturer files a notification with the FDA. Congress never intended to allow all FDA approved additives used as processing aids to be allowed in food labeled organic. The NGO proposed amendments seek to maintain the use of the term “substance” so that processing aids (including those considered food contact substances by the FDA) must be reviewed by the NOSB and must appear on the national List prior to any use in organic handling.

The creation of unique categories for evaluating “food contact substances” is not appropriate. Categories are needed to govern the review of any synthetic substance (including a “food contact substance”) so there are clearly defined limits on the kinds of synthetic substances that are used in processed products.

- Amend 6517(c)(1)(B)(iii) to create a list of specific categories in which synthetic substances would be allowed.

The OFPA already contains categories that limit the substances used in crop production and containing an active ingredient. 6517(c)(1)(B)(I) and 6508. The OFPA contains categories that limit the type of synthetics used in livestock. 6509. Currently, the OFPA does not contain categories limiting the scope of synthetics used in handling because the statute was written so as not to allow any such synthetics. The use of categories would provide symmetry to other parts of the law and would provide assurances to consumers that use of synthetic substances in processed products has defined limits.

The categories are necessary to ensure that the allowance of synthetic substances is from a contained universe. The terms are selected from a FDA list found at 21 C.F.R. § 170.3(o) which describes the physical or technical functional effects for which direct human food ingredients may be added to food.

OTA Response: No response.

- Amend 6517(c)(1)(B)(iv) to ensure that the only synthetics allowed for use in the “made with organic” labeling category are those placed on the National List for use in the “made with” category. Language refers to language used at 6505(c)(1) which authorizes the “made with” label.

Technical amendment.

OTA Response: No response.

- Amend 6517(d)(1) to ensure that any use restriction (i.e. annotation) placed upon a synthetic substance when approved for use by the NOSB is recognized and published as part of the approval when added to the National List.

Amendment is designed to ensure that all limitations placed upon an approved synthetic substance are recognized and adopted into the final regulation. In the past some annotations have been included during the NOSB approval of a synthetic.

An example is the final recommendation for the use of nutrient supplementation in organic foods. The final recommendation approved that “the use of synthetic vitamins, minerals and/or accessory nutrients in products labeled organic must be limited to that which is required by regulation or recommended for enrichment and fortification by independent professional associations.” NOSB, Final Recommendation Addendum Number 13 (Austin, TX - October 31, 1995). The final regulation contains no such annotation and instead is listed as “(19) Nutrient vitamins and minerals, in accordance with 21 CFR 104.20, Nutritional Quality Guidelines For Foods.” 7 C.F.R. §205.605(b)(19).

Other NOSB annotations that were altered include those for sodium hydroxide and potassium hydroxide, potassium carbonate and chlorine.

OTA Response: Accept the addition of annotations produced by the NOSB.

NGO Counter Response: This is a technical amendment that should be made. Agreement on this matter would correct the annotations on several substances on the National List.

- Amend 6517(d)(2) to ensure that any synthetic substances used, including food contact substances, cannot be exempted from the National List process through administrative interpretations. This is intended to prevent administrative actions such as NOP's December 12, 2002 policy statement that interprets the words "still present" in its regulatory definition of "ingredient" so as to allow unrestricted use of food contact substances.

See discussion above concerning processing aids, additives and food contact substances.

OTA Response: See response above concerning food contact substances.

- Reject the commercial availability amendment by OTA.

The OTA proposal does not reflect a return to status quo. The status quo was that certifiers made the decision to allow agricultural substances in non-organic form when handlers could demonstrate that such agricultural ingredients were not available in organic form. The Harvey decision struck down this status quo and found that any such agricultural ingredient must be added through the National List process as per 6510(a)(4). As a result, handlers can now petition for additions to the National List based upon commercial unavailability and the agency and NOSB can prioritize such decisions as is warranted.

OTA Response: OTA amended its original proposal as follows (changes in bold): "The Secretary shall have authority to develop emergency procedures, **through notice and comment rulemaking**, for designating agricultural products that are commercially unavailable in organic form for placement on the National List for a period of time not to exceed 12 months, **subject to ratification by the National Organic Standards Board at its next meeting.**"

NGO Counter Response: While the National List process may be cumbersome, there still exists an avenue for handlers to get rulings on commercial unavailability. As a whole, the issue of commercial unavailability has been debated for years with no community agreement on its criteria and method of determination. Despite this ongoing debate, there is no hard data available to ascertain the cumulative extent to which exemptions have been requested and/or granted by accredited certifiers. Third parties have offered a process for the community to study and work to resolution on this issue. Given this offer and the existing National List option, the amendment should not be considered at this time and a more thoughtful and substantive proposal needs to be developed.

- Amend 6518 by adding subsection (n) which codifies the criteria to be used by the NOSB in evaluating any petition seeking the addition of synthetic substance used in handling to the National List. This amendment would codify the criteria that are contained at 7 C.F.R. §205.600(b).

The OFPA contains criteria for the evaluation of synthetics at 6518(m). Those evaluation criteria were not designed to address the evaluation of synthetic substances in handling. This gap was originally filled by the final regulation at 7 C.F.R. § 205.600(b). Adding the criteria to 6518 is necessary to create symmetry in the law and fill the evaluation gap in the original statute. It is also reiterating the status quo because the NOSB has been operating under these provisions.

OTA Response: No response.

- Amend 6518 by re-lettering section to add subsections (o) and (p).

Technical amendment.

OTA Response: No response.

- Amend 6518 (o) to ensure that the burden for justifying the continued exemption for any synthetic substance after five years on the National List (i.e. the sunset review) falls upon the party wanting such a continued exemption. The amendment would require all such synthetic substances to re-petition in full to justify continued placement on the National List.

OTA Response: No response.

Key: OTA proposed amendments: example [not appearing on the National List]
NGOs proposed amendments: example {not appearing on the National List}

SEC. 2111. 7 U.S.C. 6510 HANDLING.

(a) IN GENERAL.—For a handling operation to be certified under this title, each person on such handling operation shall not, with respect to any agricultural product covered by this title—

- (1) add any synthetic ~~{ingredient substance}~~ [not appearing on the National List] during the processing or any post-harvest handling of the product;
 - (2) add any ingredient known to contain levels of nitrates, heavy metals, or toxic residues in excess of those permitted by the applicable organic certification program;
 - (3) add any sulfites, except in the production of wine, nitrates, or nitrites;
 - (4) add any ingredients that are not organically produced in accordance with this title and the applicable organic certification program, unless such ingredients are included on the National List and represent not more than 5 percent of the weight of the total finished product (excluding salt and water).
 - (5) use any packaging materials, storage containers or bins that contain synthetic fungicides, preservatives, or fumigants;
 - (6) use any bag or container that had previously been in contact with any substance in such a manner as to compromise the organic quality of such product; or
 - (7) use, in such product water that does not meet all Safe Drinking Water Act requirements.
- (b) MEAT.—For a farm or handling operation to be organically certified under this title, producers on such farm or persons on such handling operation shall ensure that organically produced meat does not come in contact with nonorganically produced meat.

SEC. 2118. 7 U.S.C. 6517 NATIONAL LIST.

(a) IN GENERAL.—The Secretary shall establish a National List of approved and prohibited substances that shall be included in the standards for organic production and handling established under this title in order for such products to be sold or labeled as organically produced under this title.

(b) CONTENT OF LIST.—The list established under subsection (a) shall contain an itemization, by specific use or application, of each synthetic substance permitted under subsection (c)(1) or each natural substance prohibited under subsection (c)(2).

(c) GUIDELINES FOR PROHIBITIONS OR EXEMPTIONS.—

- (1) EXEMPTION FOR PROHIBITED SUBSTANCES [in organic production and handling operations]
—The National List may provide for the use of substances in an organic farming or handling operation that are otherwise prohibited under this title only if—
 - (A) the Secretary determines, in consultation with the

Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, that the use of such substances—

- (i) would not be harmful to human health or the environment;
- (ii) is necessary to the production or handling of the agricultural product because of the unavailability of wholly natural substitute products; and
- (iii) is consistent with organic farming and handling;

(B) the substance—

- (i) is used in production and contains an active synthetic ingredient in the following categories: copper and sulfur compounds; toxins derived from bacteria; pheromones, soaps, horticultural oils, fish emulsions, treated seed, vitamins and minerals; livestock parasiticides and medicines and production aids including netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleansers;
- (ii) is used in production and contains synthetic inert ingredients that are not classified by the Administrator of the Environmental Protection Agency as inerts of toxicological concern; or

~~[(iii) is used in handling and is non synthetic but is not organically produced;]~~

~~*{(iii) is used in the handling of products labeled organically produced and contains a synthetic substance in the following categories:*~~

~~*leavening agent, pH control agent, nutrient supplements, firming agents, filter aids, clarifying agents, or a cleaner, sanitizer or disinfectants used in direct food contact.}*~~

~~*{(iv) is used in or on products permitted to use the word “organic” on the principle display panel for purposes of describing the organically produced ingredients}.*~~

(C) the specific exemption is developed using the procedures described in subsection (d).

(2) PROHIBITION ON THE USE OF SPECIFIC NATURAL SUBSTANCES.—

The National List may prohibit the use of specific natural substances in an organic farming or handling operation that are otherwise allowed under this title only if—

(A) the Secretary determines, in consultation with the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, that the use of such substances—

(i) would be harmful to human health or the environment; and

(ii) is inconsistent with organic farming or handling, and the purposes of this title; and

(B) the specific prohibition is developed using the procedures specified in subsection (d).

(d) PROCEDURE FOR ESTABLISHING NATIONAL LIST.—

(1) IN GENERAL.—The National List established by the Secretary shall be based upon a proposed national list or proposed amendments to the National List, *including all proposed restrictions contained in such*

amendments, developed by the National Organic Standards Board.

(2) NO ADDITIONS.—The Secretary may not include exemptions for the use of specific synthetic substances in the National List for authorize through any other means the use of any synthetic substance other than those exemptions contained in the Proposed National List or Proposed Amendments to the National List.

(3) PROHIBITED SUBSTANCES.—In no instance shall the National List include any substance, the presence of which in food has been prohibited by Federal regulatory action.

(4) NOTICE AND COMMENT.—Before establishing the National List or before making any amendments to the National List, the Secretary shall publish the Proposed National List or any Proposed Amendments to the National List in the Federal Register and seek public comment on such proposals. The Secretary shall include in such Notice any changes to such proposed list or amendments recommended by the Secretary.

(5) PUBLICATION OF NATIONAL LIST.—After evaluating all comments received concerning the Proposed National List or Proposed Amendments to the National List, the Secretary shall publish the final National List in the Federal Register, along with a discussion of comments received.

(e) SUNSET PROVISION.—No exemption or prohibition contained in the National List shall be valid unless the National Organic Standards Board has reviewed such exemption or prohibition as provided in this section within 5 years of such exemption or prohibition being adopted or reviewed and the Secretary has renewed such exemption or prohibition.

SEC. 2119. 7 U.S.C. 6518 NATIONAL ORGANIC STANDARDS BOARD.

(a) IN GENERAL.—The Secretary shall establish a National Organic Standards Board (in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2 et seq.)) (hereafter referred to in this section as the “Board”) to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of this title.

(b) COMPOSITION OF BOARD.—The Board shall be composed of 15 members, of which—

- (1) four shall be individuals who own or operate an organic farming operation;
- (2) two shall be individuals who own or operate an organic handling operation;
- (3) one shall be an individual who owns or operates a retail establishment with significant trade in organic products;
- (4) three shall be individuals with expertise in areas of environmental protection and resource conservation;
- (5) three shall be individuals who represent public interest or consumer interest groups;
- (6) one shall be an individual with expertise in the fields of toxicology, ecology, or biochemistry; and
- (7) one shall be an individual who is a certifying agent as

identified under section 2116.

(c) APPOINTMENT.—Not later than 180 days after the date of enactment of this title, the Secretary shall appoint the members of the Board under paragraph (1) through (6) of subsection (b) (and under subsection (b)(7) at an appropriate date after the certification of individuals as certifying agents under section 2116) from nominations received from organic certifying organizations, States, and other interested persons and organizations.

(d) TERM.—A member of the Board shall serve for a term of 5 years, except that the Secretary shall appoint the original members of the Board for staggered terms. A member cannot serve consecutive terms unless such member served an original term that was less than 5 years.

(e) MEETINGS.—The Secretary shall convene a meeting of the Board not later than 60 days after the appointment of its members and shall convene subsequent meetings on a periodic basis.

(f) COMPENSATION AND EXPENSES.—A member of the Board shall serve without compensation. While away from their homes or regular places of business on the business of the Board, members of the Board may be allowed travel expenses, including per diem in lieu of subsistence, as is authorized under section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(g) CHAIRPERSON.—The Board shall select a Chairperson for the Board.

(h) QUORUM.—A majority of the members of the Board shall constitute a quorum for the purpose of conducting business.

(i) DECISIVE VOTES.—Two-thirds of the votes cast at a meeting of the Board at which a quorum is present shall be decisive of any motion.

(j) OTHER TERMS AND CONDITIONS.—The Secretary shall authorize the Board to hire a staff director and shall detail staff of the Department of Agriculture or allow for the hiring of staff and may, subject to necessary appropriations, pay necessary expenses incurred by such Board in carrying out the provisions of this title, as determined appropriate by the Secretary.

(k) RESPONSIBILITIES OF THE BOARD.—

(1) IN GENERAL.—The Board shall provide recommendations to the Secretary regarding the implementation of this title.

(2) NATIONAL LIST.—The Board shall develop the proposed National List or proposed amendments to the National List for submission to the Secretary in accordance with section 2118.

(3) TECHNICAL ADVISORY PANELS.—The Board shall convene technical advisory panels to provide scientific evaluation of the materials considered for inclusion in the National List. Such panels may include experts in agronomy, entomology, health sciences and other relevant disciplines.

(4) SPECIAL REVIEW OF BOTANICAL PESTICIDES.—The Board shall, prior to the establishment of the National List, review all botanical pesticides used in agricultural production and consider whether any such botanical pesticide should be included

in the list of prohibited natural substances.

(5) **PRODUCT RESIDUE TESTING.**—The Board shall advise the Secretary concerning the testing of organically produced agricultural products for residues caused by unavoidable residual environmental contamination.

(6) **EMERGENCY SPRAY PROGRAMS.**—The Board shall advise the Secretary concerning rules for exemptions from specific requirements of this title (except the provisions of section 2112) with respect to agricultural products produced on certified organic farms if such farms are subject to a Federal or State emergency pest or disease treatment program.

(l) **REQUIREMENTS.**—In establishing the proposed National List or proposed amendments to the National List, the Board shall—

(1) review available information from the Environmental Protection Agency, the National Institute of Environmental Health Studies, and such other sources as appropriate, concerning the potential for adverse human and environmental effects of substances considered for inclusion in the proposed National List;

(2) work with manufacturers of substances considered for inclusion in the proposed National List to obtain a complete list of ingredients and determine whether such substances contain inert materials that are synthetically produced; and

(3) submit to the Secretary, along with the proposed National List or any proposed amendments to such list, the results of the Board's evaluation and the evaluation of the technical advisory panel of all substances considered for inclusion in the National List.

(m) **EVALUATION.**—In evaluating substances considered for inclusion in the proposed National List or proposed amendment to the National List, the Board shall consider—

(1) the potential of such substances for detrimental chemical interactions with other materials used in organic farming systems;

(2) the toxicity and mode of action of the substance and of its breakdown products or any contaminants, and their persistence and areas of concentration in the environment;

(3) the probability of environmental contamination during manufacture, use, misuse or disposal of such substance;

(4) the effect of the substance on human health;

(5) the effects of the substance on biological and chemical interactions in the agroecosystem, including the physiological effects of the substance on soil organisms (including the salt index and solubility of the soil), crops and livestock;

(6) the alternatives to using the substance in terms of practices or other available materials; and

(7) its compatibility with a system of sustainable agriculture.

{(n) ADDITIONAL EVALUATION OF SUBSTANCES USED IN HANDLING. In evaluating substances used as non-organic ingredients (including all food contact substances) or additives for inclusion on the National List for handling will be evaluated against the following criteria: (1) The substance cannot be produced from a natural source and there are no organic

substitutes;

(2) The substance's manufacture, use, and disposal do not have adverse effects on the environment and are done in a manner compatible with organic handling;

(3) The nutritional quality of the food is maintained when the substance is used, and the substance, itself, or its breakdown products do not have an adverse effect on human health as defined by applicable Federal regulations;

(4) The substance's primary use is not as a preservative or to recreate or improve flavors, colors, textures, or nutritive value lost during processing, except where the replacement of nutrients is required by law;

(5) The substance is listed as generally recognized as safe (GRAS) by Food and Drug Administration (FDA) when used in accordance with FDA's good manufacturing practices (GMP) and contains no residues of heavy metals or other contaminants in excess of tolerances set by FDA; and

(6) The substance is essential for the handling of organically produced agricultural products.}

~~(m)~~ (o) PETITIONS.—The Board shall establish procedures under which persons ~~{may shall}~~ petition the Board for the purpose of evaluating substances for inclusion on the National List. {New petitions are required to evaluate the continued exemption for any substance on the National List that is subject to the sunset provisions of section 6517(e).}

~~(n)~~ (p) CONFIDENTIALITY.—Any confidential business information obtained by the Board

OFPA AMENDMENTS

Dairy
7 U.S.C. §6509

NGO Proposed Amendments

- Amend 6509(e)(2) to clarify that the standard applies only to the conversion of an entire dairy herd from conventional to organic.

OTA Response: No response necessary because both parties' proposal parallels a proposal made in the NGO petition for rulemaking filed with the USDA in June 2005.

- Amend 6509(e) to include subsection (3) specifying that replacement animals born on or brought onto dairy farms that have already converted their herds to organic production must have been under organic management since the last third of gestation prior to being brought into the converted herd.

A possible unintended consequence of the Harvey ruling is that when the 80/20 feed allowance regulation is rescinded, the requirement that once a dairy herd is converted, all young animals must be organically managed from the last third of gestation may also be rescinded. This amendment would return the status quo. The final rule makes clear that this proposed amendment reflects a return to status quo stating:

“Once the herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation.” 65 Fed Reg 80560/2 (emphasis added)

“After the dairy operation has been certified, animals brought on to the operation must be organically raised from the last third gestation.” 65 Fed Reg 80570/1 (emphasis added)

“The conversion provision also rewards producers for raising their own replacement animals while still allowing for the introduction of animals from off the farm that were organically raised from the last third of gestation.” 65 Fed Reg 80570/1

OTA Response: No response.

Key: OTA proposed amendments: example [not appearing on the National List]
NGOs proposed amendments: example {not appearing on the National List}

SEC. 2110. 7 U.S.C. 6509 ANIMAL PRODUCTION PRACTICES AND MATERIALS.

(a) IN GENERAL.—Any livestock that is to be slaughtered and sold or labeled as organically produced shall be raised in accordance with this title.

(b) BREEDER STOCK.—Breeder stock may be purchased from any source if such stock is not in the last third of gestation.

(c) PRACTICES.—For a farm to be certified under this title as an organic farm with respect to the livestock produced by such farm, producers on such farm—

(1) shall feed such livestock organically produced feed that meets the requirements of this title;

(2) shall not use the following feed—

(A) plastic pellets for roughage;

(B) manure refeeding; or

(C) feed formulas containing urea; and

(3) shall not use growth promoters and hormones on such livestock, whether implanted, ingested, or injected, including antibiotics and synthetic trace elements used to stimulate growth or production of such livestock.

(d) HEALTH CARE.—

(1) PROHIBITED PRACTICES.—For a farm to be certified under this title as an organic farm with respect to the livestock produced by such farm, producers on such farm shall not—

(A) use subtherapeutic doses of antibiotics;

(B) use synthetic internal parasiticides on a routine basis; or

(C) administer medication, other than vaccinations, in the absence of illness.

(2) STANDARDS.—The National Organic Standards Board shall recommend to the Secretary standards in addition to those in paragraph (1) for the care of livestock to ensure that such livestock is organically produced.

(e) ADDITIONAL GUIDELINES.—

(1) POULTRY.—With the exception of day old poultry, all poultry from which meat or eggs will be sold or labeled as organically produced shall be raised and handled in accordance with this title prior to and during the period in which such meat or eggs are sold.

(2) DAIRY LIVESTOCK {- CONVERSION OF HERDS}.—A dairy {animal herd} from which milk or milk products will be sold or labeled as organically produced shall be raised and handled in accordance with this title for not less than the 12-month period immediately prior to the sale of such milk and milk products. **[Provided, that crops and forage from land included in the dairy farm's organic system plan that is in the third year of organic management may be consumed by that farm's**

dairy animals during the 12 month period immediately prior to the sale of organic milk and milk products.]

{(3) DAIRY LIVESTOCK - REPLACEMENT ANIMALS. All dairy animals brought onto to a dairy farm already converted to organic production shall have been raised under organic management practices from the last third of its gestation}.

(f) LIVESTOCK IDENTIFICATION.—

(1) IN GENERAL.—For a farm to be certified under this title as an organic farm with respect to the livestock produced by such farm, producers on such farm shall keep adequate records and maintain a detailed, verifiable audit trail so that each animal (or in the case of poultry, each flock) can be traced back to such farm.

(2) RECORDS.—In order to carry out paragraph (1), each producer shall keep accurate records on each animal (or in the case of poultry, each flock) including—

(A) amounts and sources of all medications administered;
and

(B) all feeds and feed supplements bought and fed.

(g) NOTICE AND PUBLIC COMMENT.—The Secretary shall hold public hearings and shall develop detailed regulations, with notice and public comment, to guide the implementation of the standards for livestock products provided under this section.