



C E N T E R F O R FOOD SAFETY

660 PENNSYLVANIA AVE., SE, SUITE 302, WASHINGTON, DC 20003
(202) 547-9359 FAX (202) 547-9429
2601 MISSION ST., SUITE 803, SAN FRANCISCO, CA 94110
(415) 826-2770 FAX (415) 826-0570
WWW.CENTERFORFOODSAFETY.ORG

December 22, 2008

Richard H Mathews
Chief, Standards Development and Review Branch
National Organic Program
Transportation and Marketing Programs
1400 Independence Ave. SW
Room 4008- So., Ag Stop 0268
Washington D.C.
20250

Docket No. AMS-TM-06-0198; TM-05-14

To Whom It May Concern:

The Center for Food Safety (CFS) submits the following comments on the proposed rule, "Access to Pasture (Livestock)" under the United States Department of Agriculture National Organic Program. 73 Fed. Reg. 207 (October 24, 2008).

CFS is a non-profit public interest and environmental advocacy membership organization established in 1997, working to protect human health and the environment from potentially harmful food production technologies and promoting sustainable alternatives. CFS combines multiple tools and strategies in pursuing its goals, including litigation and legal petitions for rulemaking, policy and research, as well as public education. CFS works on a variety of environmental, agriculture and human health issues including the organic standards, climate change, genetic engineering, livestock pollution and labeling. CFS represents over 70,000 members across the country. CFS is a member of the National Organic Coalition (NOC) made up of consumer organizations, organic farmers and certifiers and other stakeholders.

BACKGROUND

In the October 24, 2008 Federal Register the USDA Agricultural Marketing Service published the proposed rule for access to pasture for livestock under the National Organic Program (NOP). The proposed rule has been in the making for several years and between 1994 and 2005 the National Organic Standards Board (NOSB) made six recommendations regarding access to pasture and confinement of animals. Most recently, the USDA sought comment in 2006 on the current role of pasture in the NOP regulations and whether they should be amended. The more than 80,000 people who commented on the Advanced Notice of the Proposed Rulemaking (ANPRM) were clear about the expectations they have for organic livestock production and there was overwhelming support to amend and clarify the role of pasture in organic livestock production. Significantly, more than 71,000 ANPRM commenters expressed opposition to feeding organic dairy animals in non-pasture settings such as dry lots or feedlots. As well, more than 54,000 commenters stated that they pay a premium for milk from animals that graze on pasture. Additional comments received by the USDA expressed explicit concern about “factory-style farms” that import calves and raise them in feedlots with little or no access to pasture.

The ANPRM comments received by the USDA are certainly telling of the expectations that consumers have for organic animal and dairy production. CFS believes that the USDA greatly considered such comments in their proposed rulemaking and CFS commends the USDA for establishing a proposed rule that incorporates the wants and needs of the American public. As well, USDA explains that the proposed rule is meant for two reasons: 1) “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”¹, and 2) “to satisfy consumer expectations that ruminant livestock animals graze pastures during the growing season.”²

CFS welcomes the clarification of pasture access in organic livestock production and believes that clear, concise and detailed expectations will enable farmers, certifiers and the buying public to better understand the organic process and product and be reassured of its high standard. Given recent violations in the organic dairy and meat industry which, in many ways, may have undermined the public’s trust in the organic seal and standard, CFS is pleased with the proposed rule as it aims to create clear standards and processes for organic livestock production. CFS believes that the proposed pasture rule can continue to evolve and improve the organic ethic and restore the faith of the American people in the organic standard and seal.

CFS appreciates the opportunity to comment on the proposed access to pasture rule and we have a number of comments, recommendations and concerns about the proposed rule as discussed in detail below.

¹ 73 Fed. Reg. 207 (October 24, 2008)

² Id.

CENTER FOR FOOD SAFETY COMMENTS

I. Animal Living Conditions - Dry lots and Feedlots

Under the proposed rule, USDA aims to clarify the definition of dry lots and feedlots and to make clear that such facilities are outlawed in the proposed rule for organic livestock production. Under the proposed rule, USDA defines a feedlot as “a confined area for the controlled feeding of ruminants.” A dry lot is defined as “a confined area that may be covered with concrete, but that has no vegetative cover.” To further define and clarify the definition of a feedlot, CFS agrees with the NOC to define a dry lot as, “A confined area that may be covered with concrete, but that has no vegetative cover, where livestock are kept in continuous total confinement.” CFS strongly agrees with the USDA’s claim that “dry lots and feedlots do not meet the requirements for pasturing organic ruminant animals.”³

In a poll conducted by CFS in 2006⁴, we found that the majority of organic milk purchasers also agree with the USDA that dry lots and feedlots should not be a part of organic livestock production. We believe that most of the public believes that organic animal production carries some types of guarantee that animals are treated in a humane way and are not continuously confined. Some of the results of our poll were as follows:

- A majority of people who ever purchase organic milk (51%) say they would no longer purchase organic milk if they knew that many organic cows were confined to fenced-in feedlots and did not graze on pasture for most of their lives.
- Four-four percent (44%) of those who frequently purchase organic milk would no longer do so if they knew that many organic cows were confined to fenced-in feedlots and did not graze on pasture for most of their lives.

Women (the principal family food purchasers) are even more apt to change their organic milk purchasing habits:

- Sixty-one percent (61%) of women who purchase organic milk either frequently or seldomly would no longer do so if they knew that many organic cows were confined to fenced-in feedlots and did not graze on pasture for most of their lives.

Finally, our poll demonstrated that if organic milk producers hope to grow the organic milk market by changing seldom purchasers into frequent purchasers and restoring the faith in the organic seal, feedlots and dry lots should not be a part of organic production.

³ 73 Fed. Reg. 207 (October 24, 2008) Pg. 63589.

⁴ The national polling was conducted by the firm American Viewpoint. This data is from a national survey of 1011 U.S. adults conducted March 29 through April 3, 2006. The margin of error for the entire sample is plus or minus 3% at the 95% confidence level. The margin of error for the organic milk consumer (n=188) is plus or minus 7.2% at the 95% confidence. Full data from this poll is available at <http://www.centerforfoodsafety.org>. CFS notes that the sample size used in its polling is consistent with the survey sample size used by the California Institute for Rural Studies, in its USDA-AMS funded study, “Regulating Organic: Impacts of the National Organic Standards on Consumer Awareness and Organic Consumption Patterns.”

- Fifty-eight percent (58%) of consumers that seldom purchase organic milk stated they would not purchase organic milk if they knew that many organic cows were confined to fenced-in feedlots and did not graze on pasture for most of their lives.

Clearly, the majority of American organic milk consumers do not want dry lots or feedlots to be a part of the organic standard and CFS applauds the USDA for explicitly excluding their use in the proposed rule. To continue to increase consumer confidence in the organic standard and to search for ways to improve the organic standard it is vitally important to consider the opinions and actions of the buying public. Without a market for organic milk and other organic animal products, there is no viable organic industry and farmers, certifiers and others must continue to provide the American people with the types of organic products they want and expect under a strong organic standard.

To allow for the strongest standards possible CFS recommends further clarifying “shelter” in the proposed rule. Under section §205.239 USDA notes that producers must “establish and maintain year-round livestock living conditions which accommodate the health and natural behavior of animals” including “year-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, water for drinking (indoors and outdoors), and direct sunlight, suitable to the species, its stage of live, the climate, and the environment.” CFS is pleased to see that the USDA realizes that dry lots and feedlots do not allow animals to achieve such comforts and necessities, but also recommends including a definition for “shelter”, as also recommended by the NOC, in the proposed rule which will encourage proper sheltering and care of animals. Shelter should be defined as,

“Structures such as barns, sheds, or windbreaks, or natural areas such as woods, tree lines, or geographic land features that provide physical protection and/or housing to animals.”

By adopting this definition, CFS believes that the rule will be effective in allowing for comfortable sheltering of animals as necessary in barns and other humane structures during inclement weather and other events without allowing for the confinement of animals in dry lots and feedlots. As well, CFS believes that the clarification of this definition will enable farmers to better understand the types of humane structures that are permissible in the organic standard.

Further, we support the list of exemptions to pasture contained in the proposed rule (e.g., for birthing, inclement weather, illness, injury, etc.). We advise the reinstatement of these exemptions for ruminants from pasture and outdoor access during periods of inclement weather and to protect soil and water quality. While we would like USDA to mandate as much access to pasture as possible, we do not want livestock on pasture in situations where it may adversely affect their health and welfare or if it threatens soil and water quality.

As well under the proposed rule, USDA recommends under §205.239(3) that when hay, straw, ground cobs or other crop matter typically fed to the animal species is used as bedding it comply with the regulations for livestock feed under section §205.237. If animals are using bedding materials that they may also eat, it is prudent to require the same standards for such materials as it is for their food. We believe that this requirement will help to strengthen the

integrity of the organic label and CFS supports the inclusion of this regulation in the proposed rule.

II. Animal Confinement for Finishing Beef

Confinement of animals in an organic system is one of the primary issues of consumer concern. We agree with USDA that, “exemption from pasture for finish feeding is contrary to the expected intent of pasture-raised animals in organic systems. Allowing confinement feeding for beef cattle would constitute an inconsistent application of the pasturing requirement.” Allowing for such exclusion would create the types of illegal loopholes that have necessitated the establishment of a clear pasture rule in the first place and may continue to undermine the public’s faith in the organic standard. It is clear from both the CFS poll and others that the USDA has cited in the Federal Register, that consumers do not want their organic animal products to be produced in confinement or feedlots. Such confinement is also contrary to organic principles and the Organic Foods Production Act (OFPA). We commend the USDA for recognizing the public’s concern about these issues and for addressing them in the proposed rule.

CFS understands that during the grazing season ruminant slaughter stock may be grain fed or “finished” to meet consumer taste expectation. While research has demonstrated that cattle can be completely grass finished and still achieve the same type of high-quality product that the American people have come to expect in meat,⁵ CFS believes the rule should allow for grain finishing of organic beef as well as grass finishing, in order to meet current consumer preferences. However, these animals should not be denied pasture during the time they are being grain finished. Failure to provide pasture during grain finishing could create the development of organic confined animal feeding operations (CAFOs), which is precisely the type of institution that the pasture rule and the American people are looking to avoid, contrary to the clear intent of OFPA. CFS agrees with USDA that, “There is nothing inherent in the finish feeding of beef cattle that precludes them from being provided with pasture.”

We suggest adding an exemption from meeting the 30% of dry matter from pasture during the grazing season for organic beef to accommodate consumer desire for corn finished meat. This language recognizes the requirements of the market and the producer’s need to maximize their profit while not creating a beef finishing lot which the US consumer has repeatedly opposed in comments to USDA. All of the available data, research and comment to the ANPR has a consistent theme of opposing confining livestock and feedlot feeding.

We recommend including the following in § 205.237(c)(1):

⁵ Beef finishing is defined as the final 90-120 days of a beef cattle’s life where some producers feed cattle grain as a way to obtain the desired marbling effect of the meet and attain a “select” or “choice” grade. Studies have shown that the same grades can be achieved by finishing animal on pasture, although more time is required when diets are strictly forage based (Center for Integrated Agricultural Systems. (Sept. 2008) “Does pasture-finished beef make the grade?” UW Madison College of Agriculture and Life Sciences, Research Brief # 77).

Except that, ruminant slaughter stock that are typically grain finished may be exempt from the 30% pasture DMI requirement during the finishing period, not to exceed 120 days, but must not be denied pasture during that period.

III. Dry Matter Intake Requirement and Grazing vs. Growing Season

Under the proposed rule, USDA requires that organic livestock must receive at least 30% of their dry matter intake (DMI) from pasture and be on pasture for no fewer than 120 days. As indicated in the proposed rule publication, previous studies note consumer approval of such requirements. A Whole Foods Market, Inc. survey shows that 69% of consumer respondents expected most of an organic dairy animal's food to come from pasture. Similarly, a Consumers Union survey found that more than two-thirds of those surveyed believed that the NOP standards should require that organic animals graze outdoors. As well, a Natural Marketing Institute study found that 72% of organic dairy users noted that it was either extremely or somewhat important that organic dairy products are from animals that graze on pasture.

While CFS encourages the adoption of this requirement we also propose further definitions to make the rule applicable to all types of organic livestock producers in various regions throughout the United States. As such, CFS supports the NOC recommendation to replace "growing season" with "grazing season" to better incorporate the realities of livestock production especially in Western regions of the United States. The definition of grazing season would read,

"The grazing season is when pasture plants are available for ruminants to graze. Grazing season may be shorter than the growing season due to mid-summer heat and humidity, significant precipitation events, floods, hurricanes, or droughts. Grazing season may extend beyond the growing season due to grazing of crop residues or stockpiled vegetative growth. The grazing season for organic production may range from 120 to 365 days, but shall not be less than 120 days."

As well, we also encourage language in the final rule which encourage farmers to maximize use of pasture. In many regions of the United States farmers will be able to pasture animals for significantly longer than 120 days and should be encouraged to maximize the use of pasture. We also believe that farmers should not be placed under considerable new reporting burdens to implement such rules and that further clarifications are needed regarding the DMI. We feel that it is important to explicitly state that the 120 day requirement need not be continuous and is the average DMI, so as to not add considerable and unnecessary burdens to farmers and certifiers. We recommend along with NOC, to include a section §205.237(d) in the final rule to read,

"The grazing season for determination of the parameters in 205.237(c) is not less than 120 days. All classes of ruminants over 6 months of age shall receive, at a minimum, 30% of their dry matter demand from pasture for this 120 day period. This minimum shall be the average of the intake for the 120 day grazing season. Due to weather, season, and geographic location, this 120 day period may or may not be continuous."

IV. Environmental and Soil Sustainability Requirements

Under the proposed rule, USDA makes several significant recommendations about environmental and soil sustainability requirements. CFS applauds the USDA for including such measures in the proposed rule and believes that such regulations are in compliance with the original intent of the organic standard and OFPA to be environmentally sustainable and conscious. Organic certification has an inherent environmental stewardship component that must continue to be strengthened as the standard evolves. While many people may choose to eat organic animal products for a variety of reasons, we should consider that a likely significant portion of people choose to eat organic products because they believe it is better for the environment. In fact, recent evidence from the United Nations demonstrates that animal production is responsible for nearly 1/5 of all global greenhouse gas emissions.⁶ As a result, many in the public may be questioning the role of meat and dairy in environmental problems and considering ways to combat and reduce environmental issues in agriculture and food production. As such, CFS believes that an increasing number of people throughout the United States and the world will be looking to organic products as a means to reduce their “carbon footprint” and their overall environmental impact. USDA should recognize the role it can play in fostering environmental stewardship and sustainability within the National Organic Program, especially with regards to organic animal production.

In particular, CFS supports section §205.239 (f) that notes that livestock operations “must manage outdoor access areas, including pastures, in a manner that does not put soil or water quality at risk” including the use of buffer zones and fences to prevent animals and their wastes from entering waterways. Animal manure is a significant source of nitrogen, phosphorus and a variety of other pollutants to both the air and the water. Environmental impairment from agricultural runoff and animal wastes entering waterways is significant. “It is estimated that animal feeding operations account for 16% of agricultural pollution.”⁷ Such releases to waterways can be devastating to the environment and will continue to exacerbate global warming.

Phosphorus and nitrogen releases into waterways cause a variety of environmental impacts. “The effects of increased nutrients on freshwater and marine ecosystems are well documented and include eutrophication, hypoxia, and decreased biodiversity.”⁸ Eutrophication is the excess of phosphorus and nitrogen in water⁹ that eventually leads to hypoxia. An excess of nutrients in water can produce algal blooms that absorb available oxygen quickly. As algae grow and then decompose, they choke waterways of available nutrients and oxygen and advance a waterway into a hypoxic stage. “Hypoxia results when

⁶ Steinfeld H, Gerber P, Wassenaar T, Castel V, Rosales M, de Haan, C (2006). *Livestock's Long Shadow- Environmental Issues and Options*. Food and Agriculture Organization of the United Nations.

⁷Center, T. and Feitshans T., Regulating Manure Application Discharges from Concentrated Animal Feeding Operation in the United States. *Environmental Pollution* 141 (2006) 571-573.

⁸Bernot, M., et al. Nutrient Uptake in Streams Draining Agricultural Catchments of the Midwestern United States. *Freshwater Biology* 51 (2006) 499-509.

⁹Aillery M., et al. Managing Manure to Improve Air and Water Quality. *United States Department of Agriculture, Economic Research Service Report* 9 September 2005.

oxygen consumption, primarily through decomposing organic material, exceeds oxygen production through photosynthesis and replenishment from the atmosphere.”¹⁰

The build-up of such nutrients and the resulting environmental damage is directly contributing to global warming through the increased production of greenhouse gases. As rotting plants and algae die they emit methane¹¹. All types of waterways, especially oceans and wetlands, have huge potential for carbon sequestration through aquatic plant life among other things.¹² As these plants die off, they are no longer able to sequester carbon, and in many cases begin to emit greenhouse gases that contribute to global warming. In wetlands especially, changes in the nutrients’ (i.e., phosphorus and nitrogen) loadings can affect carbon and nutrient transformations and the ability of wetlands to absorb nitrogen.¹³

CFS is encouraged to see the USDA require that farmers manage their farmlands and outdoor access areas in a way that will minimize water pollution from livestock and continue to curb environmental pollution and global climate change. Similarly, CFS applauds the USDA for section §205.240 which highlights notable and explicit details about the ways in which pasture should be managed to encourage environmental and soil sustainability. This requirement dovetails with and strengthens the existing regulations mandating that organic operations conserve biodiversity.¹⁴ By requiring that pasture be managed as a crop, USDA is encouraging effective planning, documentation and reporting of environmental standards. A comprehensive pasture plan will give the public renewed faith in the environmental components of the organic standards and allow certifiers to better quantify environmental sustainability in organic practices. As well, it will allow farmers greater opportunity to share best practices as they begin to clearly document their environmental management of their pastures and encourage continued development of the best environmental practices available to their farm and area.

VII. Sacrificial Pasture

Under section §205.240(11)(d), USDA includes specific requirements under the Comprehensive Pasture Plan to include a sacrificial pasture for grazing, which could be used when other pastures may be excessively damaged by grazing due to saturated soil conditions. CFS believes that the inclusion of a sacrificial pasture into the Comprehensive Pasture Plan can be an effective way to discourage loopholes that would allow farmers to not put their animals on pasture. We further support USDA’s definition of sacrificial pasture which explicitly excludes dry lots and feedlots for use as sacrificial pasture.

¹⁰Committee on Environment and Natural Resources. An Integral assessment – Hypoxia in the Northern Gulf of Mexico. *National Science and Technology Council*. May 2000.

¹¹ Giani, Luise; Ahrensfield, Elke. (2002). Pedobiochemical indicators for eutrophication and the development of “black spots” in tidal flat soils on the North Sea coast. *Journal of Plant Nutrition and Soil Science*, 165: 537-543.

¹² IPCC. (2000). IPCC Special Report on Land-Use Change and Forestry. A Special Report of the Intergovernmental Panel on Climate Change. Online at <http://www.ipcc.ch/>

¹³ Science article

¹⁴ §205.250(5); 65 Fed Reg 80563; 65 Fed Reg 80640

Sacrificial pastures are a pasture management technique that aims to improve environmental sustainability and increase livestock access to pasture. Sacrificial pastures, if well-managed under the proposed standards put forth by the USDA in section §205.240(11)(d), will encourage longer pasturing of animals and sustainable pasture management. In addition, active and proper management of sacrificial pastures creates beneficial environmental stewardship practices and ultimately will prevent excessive treading, which would be detrimental to farmer profits. Sacrificial pastures are recognized as necessary component to proper management systems by universities and organizations such as the National Sustainable Agriculture Information Service (ATTRA)¹⁵.

While CFS supports the inclusion of sacrificial pastures to Comprehensive Pasture Plans, it also recognizes that there are considerable challenges to implementation. Issues such as land mass, drainability, proximity to water, and nutrient management plans may present significant problems for implementing a sacrificial pasture. In some cases, sacrificial pastures may simply not be possible on certain farms and could even create a situation where environmental stewardship may be compromised. As well, CFS believes that the mandatory requirement of sacrificial pastures may give large farms an advantage over smaller family farms that would simply not have the land mass to support such a practice. Nevertheless, CFS believes that including sacrificial pastures into the Comprehensive Pasture Plans where possible, is ultimately beneficial to farmers, animals and the public purchasing the product.

We recommend that the USDA encourage, but not make mandatory, the inclusion of a sacrificial pasture into the Comprehensive Pasture Plan in situations where such a practice is feasibly possible and would not create additional environmental burdens. Farmers who are unable to include a sacrificial pasture in their Comprehensive Pasture Plan should include a brief description citing the reasons for such and include details about the ways in which they will be sure that animals receive more than 120 days of access to pasture and 30% of DMI from pasture if inclement weather may prevent this.

VI. Origin of Livestock

In the proposed rule under section §205.236, USDA discusses Origin of Livestock. CFS believes that the regulations and definitions associated with Origin of Livestock should not be included under the Pasture Rule. As currently proposed in the rule, the regulation would allow certain farms to buy non-organic animals, and require others to buy or raise only organic young stock. This is contrary to the organic standard and OFPA. CFS encourages the USDA to publish a Proposed Origin of Livestock Rule, and along with NOC encourages that there be one criterion for dairy replacement animals for all operations: “Once an operation has been certified for organic production, all dairy animals born or brought onto the operation shall be under organic management from the last third of gestation.”

VII. Livestock Definition

We oppose the inclusion of “bee” and “fish used for food” in the definition of livestock until meaningful and acceptable standards are issued for those systems. While standards for

¹⁵ <http://attra.ncat.org/attra-pub/nutrientcycling.html>

these systems are important, they should not be included in the narrow confines of a pasture rule. We suggest the deletion of the words “bee,” and “fish used for food” until such time as a Final Rule is enacted establishing standards for the organic production of such species and systems. Therefore, we suggest:

Any cattle, sheep, goat, swine, poultry, or equine animals used for food or in the production of food, fiber, or feed, or other agricultural-based consumer products; wild or domesticated game; or other non-plant life.

Conclusions

The Center for Food Safety (CFS) welcomes the USDA’s publication of the long overdue Proposed Organic Pasture Rule that holds organic livestock producers accountable to the high standards that consumers expect for products labeled as certified organic. If adopted with the changes we have recommended, the Rule would stop “organic” factory farms in their tracks and level the playing field for family farmers to compete in the organic meat and dairy market.

CFS favors the passage of a Rule that, in its implementation, strongly supports the spirit and intent of organic agriculture. Our research has shown that organic consumers expect that livestock and dairy producers feed their animals a 100 percent organic, non-genetically engineered and antibiotic-free diet. They also expect that they humanely treat their animals and provide them with pasture throughout their lives. We applaud the USDA’s National Organic Program (NOP) for issuing a proposal that in the main takes these expectations into account.

We believe that the adoption of the new proposed rule with the modifications we recommend will not only serve to protect the integrity of the National Organic Standards, but also to ensure the healthy and humane treatment of animals in a manner that is environmentally protective of farmland.

Respectfully Submitted,

Meredith Niles
Cool Foods Campaign Coordinator
The Center for Food Safety

Heather Whitehead
True Food Network Director
The Center for Food Safety