TEXAS DEPARTMENT OF AGRICULTURE

TODD STAPLES
COMMISSIONER

December 23, 2008

Mr. Richard H. Mathews, Chief
Standards Development and Review Branch
National Organic Program
Transportation and Marketing Programs
USDA–AMS–TMP–NOP
1400 Independence Ave., SW.
Room 4008–So., Ag Stop 0268
Washington, DC 20250.

Docket number AMS–TM–06–0198; TM–05–14

Dear Mr. Mathews:

Thank you for holding a listening session in Texas at our request on the National Organic Program (NOP) - Access to Pasture (Livestock) Proposed Rule. The Texas Department of Agriculture (TDA) respectfully submits the following comments on the proposed rule.

General

As one of the first states to implement a state organic standards program, we appreciate the difficulty of the work the National Organic Standards Board (NOSB) and the NOP have done to clarify the organic livestock access to pasture requirements. TDA strongly supports a regulation that establishes verifiable and enforceable organic standards. However, it would be a tragedy to strangle the tremendous growth of the organic production sector by regulating producers out of the business and therefore driving consumer prices higher. The proposed rule contains several provisions with unintended consequences and regional bias. Many provisions were not part of the NOSB recommendation, and were not part of the public process that produced the NOSB recommendation. While we support many of the points in the NOSB recommendation, we believe it is premature to include changes in the regulation that were not included in the NOSB discussion. Those changes should be removed from the proposal, discussed by the NOSB and publicly debated before proposing to incorporate those changes in the rule.

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The proposed changes that were not included in the NOSB recommendation include:

- In §205.239(a)(2)(ii), the proposed rule prohibits feedlots and dry lots for finishing slaughter animals. The NOSB recommended allowing confinement for up to 120 days for finishing organic slaughter stock. This allowance is important so that organic producers can continue providing consumers of organic products a choice between grain finished and 100% grass-fed meat products. Both finishing methods can be done in accordance with the organic standards, and both can produce a high quality organic product that is in high demand. The exception allowing the confinement of cattle or other slaughter stock for finishing should be included in the rule revision, as recommended by the NOSB.
- Differentiation between ruminants and non-ruminants in §205.239(b) and (c) regarding exceptions to access to the outdoors/pasture should be combined. These exceptions should apply more generally to all types of animals. For example, any animal being raised for fiber production should be allowed to be confined for shearing, not just sheep. Confinement during inclement weather (as defined in the proposal "weather that is violent, or characterized by temperatures (high or low) that can <u>kill</u> or cause <u>permanent physical harm</u> to a given species of livestock,") should be allowed for any animal, not just for goats. It would be unacceptable and cruel to prohibit producers from protecting their animals from harm. This would contradict other sections of the rule (§205.238(a)(4) and §205.239(a)(1)), which require the producer to provide shelter suitable to the climate that reduces stress and accommodates the health of the animals. Combine paragraphs (b) and (c), with revisions.
- Overly prescriptive requirements in §205.239(d)(1)-(6) that specify living conditions for ruminant livestock should be eliminated. The organic producer and the certifying agent should agree to an organic management plan that meets the general requirements for livestock living conditions and that is suitable to the environment and climate of that particular operation.
- The requirement in §205.239(f) to exclude livestock from surface water sources such as ponds and streams, using fences and buffer zones is unnecessary. As documented in the economic impact analysis and comment on the proposed rule submitted by Texas Comptroller Susan Combs, this requirement would represent an enormous expense to ranchers and other livestock producers with large acreage. It is unworkable, and would be detrimental to wildlife. Other water quality regulations, along with the requirement in the organic standards to maintain or improve the natural resources of the operation, are sufficient to guide management decisions that protect surface water sources.
- New §205.240 regarding pasture practices, including a requirement for sacrificial pasture should be deleted. This entire section is unnecessary, because it simply reiterates the requirements that already exist in §§205.200-205.207. Sacrificial pasture would not always be the best pasture management practice to protect soil

> and water quality. Producers and certifiers should evaluate the environmental conditions and resources of each operation to determine how best to achieve compliance with the standards.

The proposed changes that were not included in the NOSB recommendation should be removed from this proposal and discussed more thoroughly by the NOSB and the organic community before making these changes in the rule. This regulation is a National Organic Standard. It should acknowledge differences in regional organic production practices throughout the United States. Any proposed changes should apply to all sections of the country and to all sectors of the organic livestock industry. It should take into account regional differences, different climates, different soils and different environmental issues that affect production practices best suited to different kinds and classes of livestock across the country. We agree pasture access can be, should be and already is a standard for organic livestock production, but we do not believe the methodology outlined in the proposed rule is the best approach to ensure compliance with this requirement. Access to pasture for ruminants is currently required in §205.239 and certifying agents have procedures in place to ensure animals have access to pasture.

Origin of Livestock

The proposal also includes modifications to §205.236 regarding Origin of Livestock. The title of the docket is "National Organic Program (NOP) – Access to Pasture (Livestock); Proposed Rule." The proposed modification does not relate to access to pasture, and was not included in the NOSB recommendation on pasture. However, it is understood that the NOP intended to clarify their current interpretation of the existing rule and is seeking input regarding future changes to this regulation. The Organic Foods Production Act of 1990 (OFPA) states in §6509(e)(2): "Dairy Livestock – A dairy animal from which milk or milk products will be sold or labeled as organically produced shall be raised and handled in accordance with this chapter for not less than the 12-month period immediately prior to the sale of such milk and milk products." Nowhere does OFPA state that dairy animals must be managed organically from the last third of gestation. If it is possible for dairy products to be considered organic after an animal has been managed organically for 12 months, this standard should apply to dairy animals regardless of the method used by the producer to transition to organic production. The "two-track" system is inherently unfair and limits some producers to raising their own replacement animals or requires them to pay a premium price to buy organic dairy replacements. This limits the ability of these producers to increase the size of their herds to meet the growing market for organic dairy products, restricts genetic diversity within the herd and puts them at a competitive disadvantage. Any organic dairy producer should be allowed to obtain replacement animals from any source and manage them organically for 12 months before they are added to the organic milking herd.

Dry Matter Intake

The determination of dry matter intake (DMI) based on calculating theoretical dry matter demand is inaccurate, and is based on an artificial average of 3% of an animal's bodyweight. The age, physiological status, species and breed of animal are a few of the variables that affect the nutritional needs of the animal. DMI also varies according to the type, diversity and quality of standing forage in the pasture. This is not a "one size fits all" situation, and should not be addressed with a "one size fits all" regulation. The proposed method of estimating DMI is seriously flawed, and should be removed from the proposed rule. The monthly recordkeeping requirement and calculation of DMI is overly burdensome, both for the livestock producer and for the inspector who would then be expected to verify that the pasture requirement was met.

Another problem with the 30% DMI from pasture during the growing season is the new proposed definition of "growing season," from last spring frost to first fall frost. There is no grass to be grazed the day after the last spring frost – it takes several weeks to grow tall enough to be grazed without damage to the pasture. In hotter and drier areas of the country, native grassland and rangeland go through a summer dormancy period (during the "growing season," as proposed) in which growth is negligible. During the hottest and driest months animals usually have to be provided with additional hay or other forage. Where northern states have hard winters when additional feed and cut forage is provided, in southern states the hot, dry summer creates a similar temporary shortage of grazing availability. It is unfair to establish a rule that is appropriate for the climate in some regions of the country, but not for others.

There are many tools available to determine forage quality and quantity, carrying capacity and feed requirements that are suitable for different animals in different regions. The producer should establish a grazing management plan that demonstrates compliance with the intent of the organic standards. The certifying agent reviews, evaluates and determines whether the proposed plan meets the requirements in the context of the specific organic operation. Provide enough flexibility in the regulation to allow organic livestock producers to choose the grazing management tools that are most suitable for evaluating their specific operations.

We recommend that the specifications for DMI calculation be removed from the proposed rule. If the NOP does not eliminate the DMI calculation, it should at least be more realistically based on the type and class of animal, and factor in available forage and forage quality on a regional basis. The definition of growing season should also be revised to consider all dormancy periods, such as those occurring in the summer, the lag time for early spring growth and the effect of drought. Organic producers are already required to provide pasture for ruminant animals, and should be allowed to manage grazing through good range and pasture management practices suitable to the region.

Economic Impact and Recordkeeping Requirements

In the preamble to the proposed rule, NOP requests additional information and feedback about their analysis of the impact of the proposed rule on organic producers and other businesses.

- We believe that the NOP has significantly underestimated the economic impact of installing fencing to prevent livestock from having access to ponds, streams or other surface water. The economic impact on a ranch that has 20,000 acres of native grassland or rangeland would be enormous. According to the estimate provided by Comptroller Susan Combs, the total actual cost of fencing to comply with the proposed rule would be between $20.1 and $26.8 million in Texas alone. This proposed practice is not feasible or beneficial in every case, and could also have devastating effects on wildlife. There are other practices that can be implemented to protect water quality and prevent erosion.
- The NOP has also underestimated the increased paperwork burden on producers and certifying agents that would result from the proposed change requiring monthly calculation of dry matter intake. While dairy producers normally monitor feed intake very closely, detailed feeding records are not necessarily a common practice with all types of livestock operations. Operators who had to adopt new recordkeeping systems to meet the proposed requirements would spend much more than one hour per month completing the additional documentation.

The National Organic Program is a marketing program whose purpose is to support the continued growth of the organic industry and to enable producers to supply the increasing consumer demand for organic products. It does not serve that goal to establish overly prescriptive regulations that put existing organic operations out of business and discourage others from transitioning to organic production. We must have strong, enforceable standards to preserve consumer confidence, but those standards do not need to be so stringent that they undermine the growth of the organic sector and drive up consumer prices for organic products.

We appreciate the opportunity to comment on the proposed amendments to the National Organic Standards. We stand ready to assist the NOP in crafting a workable standard that has the flexibility needed to apply to all types of organic livestock operations in all parts of the country.

Sincerely yours,

Todd Staples

Todd Staples

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