



CCOF

Organic Certification Trade Association Education & Outreach Political Advocacy



December 22, 2008

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

Re: Docket Number AMS-TM-06-0198; TM-05-14

Dear Mr. Mathews,

CCOF appreciates the opportunity to comment on the proposed changes to the National Organic Program (NOP) livestock production requirements. We are excited to see the NOP take measures to strengthen the livestock regulations and overall we see this proposed rulemaking as a positive step forward in ensuring the integrity of organic livestock production. We wholeheartedly support moving forward with a regulation which contains wording that is specific enough to be understood and consistently implemented by certifiers and producers. We appreciate the time taken by the NOP to move towards this goal; however, we believe that significant changes to the proposed regulations are necessary.

Founded in 1973 as a nonprofit organization, CCOF is one of the nation's oldest and largest third-party organic certifying agencies. We currently certify more than 2,000 organic operations in 35 states and four foreign countries and serve over 350 supporting members - consumers, suppliers, businesses and individuals - interested in supporting our work. Our certified clients include over 100 livestock operations, ranging widely in size from extremely small producers to large dairies in key production systems. Our experience certifying myriad operations and issuing compliance actions at many levels affords us a unique and important perspective and an understanding of the challenges some of the proposed changes will bring to both producers and certifying agents.

GENERAL COMMENTS

We acknowledge that meeting the expectations of the organic consumer is vital to the success of the organic marketplace. We concur that pasture-based livestock management is at the core of consumer expectations. As a consumer labeling law, the success of "organic" depends on the consumer's ability to recognize value in the label and be willing to pay a price differential for that value. It is not useful to the producer or the consumer when the government implements a regulation that is so complex and obtuse as to be completely incomprehensible to the average layman.

While CCOF wholeheartedly agrees with the intent of many of the proposed changes and additions to the regulation, we are concerned that many other changes are contradictory to the intent of OFPA, unnecessarily redundant with existing sections of the rule, contradictory with other regulatory agency requirements, overly burdensome to producers and/or unrealistic to enforce. We are also concerned that some proposed changes do not directly relate to pasture and are prematurely and unnecessarily included in this proposal.

When analyzing an issue as complicated and multifaceted as organic livestock production, it is easy to get bogged down in the details. We feel that it is essential to step back and remember what we are trying to do and why. In this case, the issue has been a small number of dairies who are not implementing a pasture based management system, and certifiers who have been unable to regulate these dairies due to vague wording and wide loopholes in the current regulation. The potential outcome of any changes to the regulations then need to be examined to determine whether they will allow certifiers to take appropriate and enforceable action against these “bad actors” to preserve the integrity of the organic marketplace. However, it is essential that we do not write a regulation that is so prescriptive, narrow and strict that it is unduly burdensome for the vast majority of organic livestock producers who are acting in good faith. We have approached our comments on this proposed regulation from a certifier’s perspective on enforcement: will it give us the tools that we need in order to draw the line between compliant and non-compliant operations and to take action against non-compliant operations that will withstand legal challenge?

Unfortunately, if implemented as currently written, we anticipate that the outcome of the proposed regulations will lead to significant numbers of small dairy and beef operations being forced out of business due to the inability to comply with the more prescriptive sections of the regulations. This outcome is obviously not what any of the stakeholders in the organic industry are looking for, and it is important that the NOP not overreact to a small number of “bad actors” by implementing a rule that will adversely affect the many dairies who have been complying with the existing regulations all along. Many of the basic suppositions regarding the effects of this proposed regulation on producers, both in the terms of temporal and financial impacts are flawed.

Additionally, because these proposed regulations have been marketed as the “Pasture Rule”, changes and additions to the regulations should stay within that scope, and should not include unrelated red herrings such as changes to the definition of livestock or origin of livestock. When the ANPR was issued in 2006, the community was asked for input on pasture issues only, and changes to additional sections of the regulation which have not been publicly vetted are inappropriate at this time.

In developing our comments, CCOF has taken into account the needs of our client base, participated in both the Accredited Certifiers Association (ACA) and Organic Trade Association (OTA) task forces, and presented public comments at the Chico, CA listening session in December 2008. While we may disagree with other groups, including the FOOD Farmers, OTA or ACA, regarding some of the fine points of the proposed regulations, it is clear that we all agree that significant changes must be made to the proposed regulations prior to implementation to reduce the burden of overly prescriptive requirements. We must also be sure that we are taking into consideration types of livestock operations other than dairy production in the Midwest and Northeast.

Therefore, we are offering these comments and suggestions for revisions to the regulations for livestock production that we believe accomplish multiple goals: they provide certifiers with the tools to get rid of “bad actor” dairies; they are simple enough to be explained to a producer or consumer; they take into account regional variations in production techniques and limitations; and they are concise and focused.

A regulation that applies not only to the entire United States, but also to any producers abroad that wish to export product to the U.S., cannot possibly anticipate and regulate every scenario possible in organic livestock production. The proposed regulations do not take into account dramatic regional

variations in climate, rainfall, availability of water, and a number of other factors, which directly affect a dairy farmer's ability to care for the soil, water, and well-being of the animals. We recommend that changes be made to the proposed rule in order to reinforce the centrality of the Organic System Plan as the basis for certification, rather than trying to regulate best management practices. In order to ensure the successful implementation of this regulation, the NOP must provide adequate oversight, training and support of the certifiers it accredits so that they are not bullied by producers wishing to push the limits of compliance. Providing guidance, rather than overly prescriptive regulations, will help ensure that there is not an unfair burden on small producers.

SPECIFIC COMMENTS AND PROPOSED LANGUAGE

Below you will find CCOF's recommended action, proposed language and comments for each of the sections of the proposed rule that require modification. Where a section is not addressed, CCOF supports the wording in the proposed regulation as written. Included as appendices are two versions of the regulatory text: one version is the text CCOF believes should be published, and the other, the current proposed regulations in strikethrough mode with CCOF's proposed modifications. Also, we have included a guidance document that CCOF has developed and provided to our producers in order to clarify what we believe pasture management requires. We thank the NOP staff for their consideration of the following comments and recommended changes to the proposed rule.

205.2 Class of Animal

Action: To be added

CCOF Recommended Language:

The segment of a herd or flock of livestock that shares a similar stage of life or production; for example: calves, heifers, lactating animals, dry stock, finishing stock, chicks, pullets, layers.

Comments: For clarity of the intention of CCOF's proposed changes to 205.237(1) & (2) the term *Class of Animal* should be defined.

205.2 Crop

Action: To be modified

CCOF Recommended Language:

Pastures, cover crops, green manure crops, catch crops, and any plant or part of a plant intended to be marketed as an agricultural product, fed to livestock, or used in the field to manage nutrients and soil fertility.

Comments: It is not appropriate or necessary to include "sod" in this rule change regarding pasture, and this inclusion could lead to the certification of organic sod for use in lawns.

205.2 Dry Matter

Action: To be deleted

Comments: This definition should be removed based on our proposed removal of the related text in the rule.

205.2 Dry Matter Demand

Action: To be deleted

Comments: This definition should be removed based on our proposed removal of the related text in the rule.

205.2 Dry Matter Intake

Action: To be deleted

Comments: This definition should be removed based on our proposed removal of the related text in the rule.

205.2 Dry Lot

Action: To be deleted

Comments: This definition should be removed based on our proposed removal of the related text in the rule.

205.2 Feedlot

Action: To be deleted

Comments: This definition should be removed based on our proposed removal of the related text in the rule.

205.2 Grazing Season

Action: To be added

CCOF Recommended Language:

The time(s) of year when pasture growth is possible from natural precipitation or irrigation and is available for livestock to graze. Grazing season(s) dates may vary because of mid-summer heat, humidity, significant precipitation events, floods, hurricanes, droughts or other weather events.

Comments: We recommend replacing “growing season” with “grazing season” as defined above to better describe the times of year when animals must be feeding on pasture. Because of the vast difference in climatic conditions across livestock production areas, the time when animals are to be grazing can not merely be defined by last and first frosts. For example, the proposed definition and use of “growing season” does not account for areas, such as arid climates, where the time period between frosts is actually a time of limited or no growth and is not suitable for grazing as it would provide no nutritive value to the animals. We suggest that wherever the word “growing” is used in the proposed rule, the word “grazing” be substituted.

205.2 Growing Season

Action: To be deleted (replace with *Grazing Season*)

Comments: see *Grazing Season* above

205.2 Inclement Weather

Action: To be modified

CCOF Recommended Language:

Weather that is violent, or characterized by temperatures (high or low), that can cause physical harm to a given species of livestock. Livestock production yields or growth rates lower than the maximum achievable are not to be considered physical harm.

Comments: Producers should not have to wait until weather kills or permanently damages their livestock to be able to protect them from the elements. Having the bar for inclement weather so high that the trigger is potential animal death or permanent damage is not only anathema to the good animal husbandry practices of producers but also ignores the animal welfare concerns of consumers and citizens. We recommend removing the word "kill" because we consider death to be one example of physical harm. Additionally, we recommend clarifying that yield reductions are not considered “physical harm”.

205.2 Killing Frost

Action: To be deleted

Comments: This definition should be removed based on our proposed removal of the related text in the rule.

205.2 Livestock

Action: To be modified (returned to current wording)

CCOF Recommended Language:

Any cattle, sheep, goats, swine, poultry, equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; or other nonplant life, except such term shall not include aquatic animals or bees for the production of food, fiber, feed, or other agricultural-based consumer products.

Comments: Without apiary and aquatic standards it is inappropriate to change the definition of livestock to include bees and fish in this rulemaking. We recommend separate rulemaking that includes specific apiculture and aquatic standards. Adding fish and bees to the definition of livestock will lead to inconsistent interpretation and implementation of standards by certifying agents. Various standards may then be implemented with no basis for determining compliance. For example, the current (or proposed) origin of livestock or livestock feed standards can not feasibly apply to either bees or fish; thus, certifiers will be left to make their own origin of livestock and feed requirement determinations for these species. If standards are developed for bees or aquaculture then the definition of livestock should be changed at that time, rather than be included in this pasture rule making.

205.2 Sacrificial Pasture

Action: To be deleted

Comments: This definition should be removed based on our proposed removal of the related text in the rule. See comments under section 205.240.

205.2 Shelter

Action: To be added

CCOF Recommended Language:

Shelter. 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.

Comments: For clarity of the intention of NOP 205.239(a)(1) the term "shelter" should be defined.

205.2 Stage of Life

Action: To be added

CCOF Recommended Language:

A discrete time period in an animal's life which requires specific management practices different than during other periods; such as: calves, chicks, etc. Lactation, breeding and other recurring events are not a stage of life.

Comments: Because we are recommending that producers be allowed to be allowed to confine animals due to "stage of life" [see 205.239(b) below], it is necessary to provide a definition for stage of life in order to ensure this exception is not abused.

205. 236 (a)(2)(iii) Origin of Livestock

Action: To be deleted (returned to current wording until further rulemaking)

CCOF Recommended Language:

Once an entire, distinct herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation.

Comments: The organic milk industry is clearly in dire need of unambiguous regulations regarding the origin of livestock. In various public venues, the NOP has stated that it intends to rewrite this section of the regulations and that the version in the current proposed regulations was included in order to spur public comments, and is considered to be a clarification of current practices. At this time, certifiers are all over the map as to how we enforce the current regulation. We do not see these proposed changes as a clarification, but as codification of one interpretation of the regulations which is unfair and discriminatory to producers. We strongly recommend that this section of the regulation be left alone until it can be fully and finally addressed.

While we understand the necessity of gathering input regarding suggestions in order to move forward with a rule change, CCOF strongly feels that attaching an origin of livestock rider on to this pasture proposal is inappropriate at this time, and does not provide for the depth of discussion necessary to ensure that the issue of herd transition and replacement animals is adequately addressed. Changes to the origin of livestock section should be withdrawn from the pasture regulations and should be addressed in a separate rulemaking. We support rapid rulemaking with the necessary input from the industry to adequately address the issues and create a level playing field for both producers and certifiers.

CCOF firmly believes that once certified, all organic dairy producers should be treated equally, regardless of the year or method of transition. The proposed language for NOP 205.236(a)(2)(iii) does not facilitate equality amongst producers; instead it reaffirms the disparate two-track system. With the effectual termination of the 80/20 exemption, all producers must transition over a 12 month period. If all producers are to be held to the same organic standard, which we believe is the expectation of consumers as well as organic producers themselves, then origin of livestock requirements must be the same for all producers. We strongly support rule making which applies a single-track replacement animal provision to all producers, regardless of conversion method.

Transition should be a one time occurrence per farming operation, with a provision for transition of additional herds only during times of physical expansion of the farming operation, such as the purchase of a new milk barn. All producers should be required to acquire replacement animals that are organic from the last third of gestation. The regulations should not allow for the certification of heifer ranches that transition animals for a year to be sold as replacements to certified dairies. The regulations should allow for certified organic operations to legally acquire certified animals that were transitioned and subsequently certified on other certified operations.

205.237(a) Livestock Feed

Action: To be modified

CCOF Recommended Language:

The producer of an organic livestock operation must provide livestock with a total feed ration composed of agricultural products, including pasture and forage, that are organically produced, except as provided in §205.101(a) or §205.236(a)(i), and, if applicable, organically handled...

Comments: Requiring that all feed sources be certified is inconsistent with exemption 205.101(a) which states that products from exempt operations may not be used in “ingredients identified as organic in processed products produced by another handling operation”. Feed fed to animals who produce edible products including milk, meat, eggs or fiber is clearly not an “ingredient identified as organic” (for example, milk cartons are not labeled “Ingredients: Organic Hay”). Therefore, feed from

operations exempt from certification under 205.101(a) must be allowed to be used for livestock feed. Changing the wording of 205.237(a) to contradict 205.101 would negatively affect small producers, and does not uphold the integrity of the organic product. While we do not believe this issue arises often, it is of particular importance to small livestock producers; for example, backyard chicken producers with 10 chickens would no longer be able to buy the small amount of feed needed from a neighbor's compliant and exempt operation.

205.237(b)(7) Livestock Feed

Action: To be modified

CCOF Recommend Language:

Provide feed or forage which contains an antibiotic.

Comments: Language as proposed is oddly worded. We hesitantly support this clarification that antibiotics are prohibited in feed, as this language is redundant to 205.237(a), which requires all feed to be certified organic. If some certifiers have been allowing the use of feed treated with antibiotics, we recommend that this be addressed through the accreditation process rather than rule making.

205.237(b)(8) Livestock Feed

Action: To be modified

CCOF Recommended Language:

Prevent ruminant animals from accessing pasture during the grazing season(s), except as provided for in § 205.239(b) or (c). The grazing season(s) must not be less than 120 days per year total. Due to weather, season or climate, the grazing season(s) may or may not be continuous.

Comments: In order to have a baseline for management on pasture, CCOF supports the requirement that producers must graze ruminant at all times possible during the grazing (not growing) season, for a minimum of 120 days per year. We believe 120 days per year is an attainable amount in all regions and in line with consumer expectations and the intent of OFPA. We recommend the 120 days need not be continuous to account for regional differences in season and climate.

205.237(c) (1)- (4) Livestock Feed

Action: To be deleted [replacement wording at 205.237 (c)(1) & (2)]

CCOF Recommended Language: See below

Comments: CCOF agrees wholeheartedly with the general consensus that organic livestock production should be a pasture based system. Additionally, we acknowledge there are many ways to manage pasture while ensuring livestock maximize grazing time and nutrition uptake. Requiring a minimum 30% dry matter intake from pasture does not take into consideration any other pasture based management approach, such as limiting the animal units per acre. In addition, the formulas for dry matter calculation as specified in the proposed rule are overly prescriptive and ultimately a burden to both producers and certifiers.

CCOF is strongly opposed to the inclusion of the proposed metrics that limit the amount of non-pasture Dry Matter Intake (DMI) to 70% and require at least 30% DMI from pasture during the "growing season", and we have voiced this opposition publicly since the original ANPR was published. We oppose the inclusion of this requirement for two main reasons: One, because of the variation in production methods and the recordkeeping burden of the calculations on the producers, and two, because this requirement cannot be enforced.

First, using DMI to ensure pasture management does not take in to account beef producers, who do not often use the same methodology of feeding and nutrition as dairy producers. The requirements for calculations and feed rations in this proposed regulation would unduly burden beef producers.

Secondly, because feed ration and feed management varies widely from region to region within the U.S., the 30% minimum pasture intake may or may not be possible in all areas. It is not fair to discriminate against producers in certain geographic regions, who may have less pasture available due to a long winter season, summer droughts, or other events out of a producer's control that affect their pasture availability. We have heard from a number of producers in central and northern California, which is considered prime dairying country, who have stated that they have done the math and they would not be able to meet the 30% requirement. Because the 30% figure is entirely arbitrary and not based on endorsed science, it is unfair to decide that a producer who is only able to get 26% DMI from pasture for their animals is noncompliant.

As noted in the "Costs of the Proposed Rule" section, the estimated number of producers who do not have enough pasture to comply with the 30%/70% requirement is under 100 nation wide. The 1,700 dairy producers who do already adequately pasture their animals should not be compelled to provide monthly reports of complex calculations in order to demonstrate their compliance. Again, we need to look at the big picture and what we are trying to accomplish with these numbers and see if there are alternative ways of ensuring that organic dairy operations are pasture based without putting the small dairyman out of business.

Thirdly, and most importantly, CCOF does not feel as though the 30%/70% provides the necessary tools for enforcement by certifiers against the "bad actors". No matter how the percentage is calculated, it is still based on two estimated variables, both of which rely on assumptions made about animals and feed which are not the same in every situation. Using this DMI calculation first assumes that all animals have the same dry matter demand (3% of body weight according to the formula provided in the proposed regulation), which any dairyman or nutritionist would proclaim is a very rough estimate. Newly freshened cows will consume much more (up around 4%) than a dry cow or heifer (closer to 2%). Using 3% of body weight to calculate the DMI guarantees that the numbers will not be accurate. Even if alternate percentages are used, as suggested in some other comments, the number of heifers, calves, dry cows, and milk animals fluctuates day by day on any dairy farm. Additionally, no dairyman weighs all of his animals, so the initial bodyweight from which the demand is calculated is also an estimate.

In addition to the assumptions and estimations used in calculating dry matter demand, calculating the amount of dry matter available in feed is similarly fraught with inaccuracies due to estimates. While there are generally recognized levels of dry matter for common purchased feeds, these can vary widely region by region and truckload by truckload. Additionally, feed produced on farm, such as silage, haylage and baling can vary in dry matter depending on the time of harvest – even morning versus evening harvest can have a significant effect on the dry matter content. Expecting organic livestock producers to test their feed in order to determine dry matter percentages would be an unfair burden on small farmers. We believe it is grossly incorrect to assume that implementation of the proposed regulations as currently written would require only one hour per year of recordkeeping as noted in the "Information Collection Burden" of the proposed regulations.

The inclusion of the 30%/70% metrics is unnecessary if the following wording is included in the final rule which will enable certifier determination of compliance with a pasture based rule:

- the definition of *Grazing Season*
- the requirement of daily grazing during the grazing season [revised §205.239(a)(2)]
- specific requirements for temporarily denying a ruminant animal access to pasture [revised §205.239(c)]
- requirement to include pasture management in the organic system plan [revised 205.237 (c) & (d)]
- evidence at inspection of a grazing system to include gates, laneways, paddocks, watering system, etc., being incorporated into the organic system plan.

In short, because the current proposed 30%/70% recommendation requires estimations of both variables involved, CCOF does not believe that it is an effective way to regulate pasture management. Certifiers will have a very difficult time ever proving that an operation did in fact not meet the requirement because animal numbers, weights and dry matter content of feed can be so easily manipulated by nutritionists, consultants or lawyers.

205.237 (c) (1) & (2) Livestock Feed

Action: To be added [to replace current proposed wording in 205.237(c)(1)- (4)]

CCOF Recommended Language:

(c) Producers shall:

- (1) Describe the total feed ration for each species and class of animal. The description must include:
 - (i) All feed produced on-farm;
 - (ii) All feed purchased from off-farm sources;
 - (iii) The percentage of each feed type, including pasture, in the total ration; and,
 - (iv) A list of all feed supplements and additives.
- (2) Document the amount of each type of feed actually fed to each species and class of animal.

Comments: In order to ensure that certifiers are able to accurately assess the production techniques of organic operations, it is essential that livestock producers supply their certifier with their anticipated feed rations. At this time, it does not appear that all certifiers are requiring this information to be submitted as part of the Organic System Plan. When deciding upon the best recommendation for this section we evaluated what a certifier needs to know to verify whether an operation feeds their animals a compliant organic ration. A certifier needs to verify where the feed comes from (the feed produced on-farm and purchased), how much of each feed type is needed (the percentage of each feed type in the total ration), what was added to the feed (supplements and additives), and how much feed was actually fed to the animals. With this information a certifier can determine compliance by evaluating purchase records, grazing records, existing inventory and herd lists at inspection and review. With the information required in the language CCOF is proposing for this section, certifiers would receive a clear indication of whether or not producers are providing a significant amount of their animals' dietary needs through pasture, and be able to verify the accuracy of the rations via the inspection process.

205.237 (d) Livestock Feed

Action: To be added

CCOF Recommended Language:

The organic system plan required in section 205.201 must include a description of pasture management, including: frequency and duration of grazing, planting, watering, harvesting, shade and water sources, and other attributes as applicable.

Comments: Rather than the overly prescriptive, repetitive and redundant wording of the proposed 205.240 (b) and (c), CCOF recommends that 205.237(d) be added to clarify what is required to be submitted as part of the Organic System Plan required in 205.201. As currently written, 205.240(c) appears to require that producers submit maps showing each tree or creek, which for many rangeland operations, would be impossible. We recommend including a more concise, simple and less burdensome management plan requirement.

205.239(a) Livestock Living Conditions

Action: To be modified

CCOF Recommended Language:

(a) The producer of an organic livestock operation must establish and maintain year-round livestock living conditions which accommodate the health and natural behavior of animals. Producers shall provide, as suitable to the species, its stage of life, the climate, and the environment:

Comments: It is unnecessary and redundant to have the requirement here that “producers may not prevent, withhold, restrain or otherwise restrict animals from being outdoors” in this section, as the requirement for “Year round access for all animals for the outdoors” is specified in 205.239(a)(1) below.

205.239(a) (1) Livestock Living Conditions

Action: To be modified

CCOF Recommended Language:

(1) Year-round access for all animals to the outdoors, except as provided for in paragraphs (b) and (c) of this section; shade and shelter as necessary, exercise areas, fresh air, direct sunlight, and clean water for drinking.

Comments: We recommend specifying "clean" water to alleviate the need to repeat the requirement to provide water in 205.239(d) as we have recommended removing this subpart. We also recommend removing the “inside and outside” language regarding water availability. Contrary to how benign and logical specifying "indoor and outdoor" water provisions may seem, this requirement is overly prescriptive and does not take into account the extreme variations in operational management and physical layouts of farms. In colder climates, water is not likely to be available outside during cold weather.

205.239(a)(2) Livestock Living Conditions

Action: To be modified

CCOF Recommended Language:

(2) For all ruminants, management on pasture and daily grazing during the grazing season(s), except as provided for in paragraphs (b) or (c) of this section

Comments: We cannot support the requirement of continuous, year-round management on pasture for ruminants, as this would result in damage to soil and water quality and is detrimental to the health of livestock, due to the variation in weather conditions. We very strongly support the requirement that ruminants be managed on pasture during the *grazing season* (see new definition above), and have also identified allowances for temporary confinement. By including a definition of “graze” and “grazing season”, and a requirement that producers provide management on pasture and daily grazing during the grazing season in 205.239, the regulations would provide producers with a clear expectation of the requirements for certification, and would allow certifiers to take action against operations not providing daily grazing. This, combined with a clear and accurate description of feed rations described in the OSP approved by the certifier, will provide the industry with what it needs to secure

consumer confidence in the “organic” label while allowing dairy producers to focus on the task of running their dairy rather than manipulating formulas.

205.239(a)(3) Livestock Living Conditions

Action: To be modified

CCOF Recommended Language:

(3) Appropriate clean, dry bedding, as necessary. If such bedding material is typically fed to the animal species, it must comply with the feed requirements of § 205.237.

Comments: We recommend that words “as necessary” be added to this requirement in order to clarify that beef animals out on the range, and other animal production systems where bedding is not necessary, do not need to be provided with bedding. We also recommend removing the unnecessary references to specific types to bedding for sake of clarity and to not limit the requirement to these crop products. NOP 205.237 has already established that only organic feed may be fed to organic livestock.

205.239(b) Livestock Living Conditions

Action: To be modified

CCOF Recommended Language:

(b) The producer of an organic livestock operation may temporarily deny an animal access to the outdoors because of:

- (1) Inclement weather and conditions caused by 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
- (5) Preventative health care procedures
- (6) Temporary management situations, such as weaning, shearing, breeding, shipping or branding

Comments: Section 205.239(b) should not be limited to non-ruminant animals, or to goats only, as it is inhumane and unfair to require ruminants to be outdoors during periods of inclement weather, or other conditions where the health or safety of the animal could be jeopardized, such as tornados, hail storms, extreme heat, etc. Additionally, requiring animals to be out on pasture during periods of inclement weather, as would be required under the proposed 205.239(c), is not only contrary to 205.200, which requires maintenance or improvement of natural resources of the operation including soil and water quality, it is inhumane. It is also unclear as to why the proposed rule allows goats protection from inclement weather but not sheep, cattle, etc. We recommend allowing all animals the protection of temporary confinement due to inclement weather and for health and safety reasons. Additionally, we are recommending the inclusion of (5) and (6) to provide for temporary confinement for preventative health care procedures (such as vaccinations) and other short term management needs (breeding, shipping, etc). Without these exceptions, it does not appear as though the proposed regulations would allow for any of these activities.

205.239(c)(1) Livestock Living Conditions

Action: To be modified

CCOF Recommended Language:

(1) When the animal is segregated for treatment of illness or injury (lactation is not an illness or injury)

Comments: Based on the definition of “stage of life” that CCOF is proposing (see above), it is not appropriate to refer to lactation as a life stage. We are recommending only that the words “the various life stages” be deleted from this section.

205.239(c)(2) Livestock Living Conditions

Action: To be modified

CCOF Recommended Language:

(2) For short time periods prior to parturition (birthing), parturition, after parturition, and at dry off as medically necessary for the animals' health;

Comments: Limiting the time in which a producer can closely manage freshening, birthing and post-birthing animals to one week is unrealistic. This is a vulnerable and unpredictable time in the animals' lives and producers must be able to give them the best care possible. Freshening ruminant animals have specific health and dietary needs. For example, pastures deficient in selenium may not be suitable for freshening cows as selenium deficiency can lead to retained placentas. In addition, a dairy cow's immune system is naturally weakened 2-3 weeks prior to calving and 2-3 weeks post-calving. Lastly, birth is a natural process that can often be unpredictable, especially for those producers using non-AI fertilization.

We believe putting stringent time restrictions on confinement during these circumstances will only lead to undeserved noncompliances. For example, if a producer misdiagnosed the due date and an animal gave birth two days later than expected that producer would be out of compliance for confining the animal for nine days instead of seven days prior to parturition. This would be an unfortunate situation with no real solution. The only response to the noncompliance the producer may be able to offer is that he will try to better predict the unpredictable nature of birth next time. The certifier is then forced to either accept the producer's promise of better future predictions and issue a correction or continue up the compliance ladder which could ultimately result in suspension of certification. Concrete imposed timelines can not reasonably be enforced on the natural process of birth. We believe that the language "for short time periods" provides the producers with the flexibility they need in order to ensure proper health care for their herd. The addition of the requirement that this temporary confinement may only be "as medically necessary for the animals' health" clarifies that these periods must be justified for health care reasons and cannot be used as a loophole for ongoing confinement.

205.239(c)(4) Livestock Living Conditions

Action: To be modified [previously 205.239(c)(6)]

CCOF Recommended Language:

(4) In the case of dairy animals, for short periods daily for milking. Milking practices, such as frequency and duration, cannot be used to deny dairy animals maximum grazing time; and

Comments: Because we cannot support the inclusion of the 30%/70% requirements for reasons noted above, we recommend removing the reference to this requirement here. Additionally, we recommend changing the last sentence to reference "maximum grazing time" rather than "pasture" in order to clarify the intent of the section. Some operations have tried to use lactation (and by default, milking) as a reason for justifiable confinement. Our recommended language emphasizes that milking absolutely does not justify prolonged animal confinement.

205.239(c)(5) Livestock Living Conditions

Action: To be modified (delete entire current section and replace)

CCOF Recommended Language:

(5) Ruminant slaughter stock for a finishing period which may not exceed one fifth (1/5) of the animal's total life or 120 days, whichever is shorter.

Comments: A major consequence of implementing the proposed regulations as written would be that organic beef operations would be unable to finish their animals for market. The organic beef market is

still in its infancy, and many consumers demand choice grades of organic beef. In order to provide the consumer with the grade of beef that they demand, producers may choose to finish their animals at least partially on grain, an option that would appear to be prohibited under the proposed regulations. CCOF recommends that beef producers be given the ability to manage their animals with final grain finishing, consistent with the 2005 NOSB recommendation and the European Union standards, which address the needs of the organic meat sector while maintaining support for the core principles of OFPA.

205.239(d) Livestock Living Conditions

Action: To be modified (delete entire current section and replace)

CCOF Recommended Language:

(d) The producer of an organic livestock operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms and optimizes recycling of nutrients and must manage pastures and other outdoor access areas in a manner that does not put soil or water quality at risk.

Comments: For the sake of clarity and brevity, we recommend condensing sections 205.239 (e) and (f) to be the new §205.239(d), however we recommend the deletion of the specific requirements regarding the use of fences and buffer zones. These requirements are overly prescriptive, unnecessary and could have negative, 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 as 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 overly prescriptive proposed regulations. Additionally, we do not believe that the cost analysis for fencing requirements is a legitimate estimation for producers in the Western United States, and that this requirement could have severe financial impacts on producers.

205.240 Pasture Practice Standard

Action: Delete entire section

Comments:

While we fundamentally agree with the necessity for clarification about pasture requirements and the need for pasture management to be described in the OSP, we believe the majority of the new section 205.240 as proposed is both overly prescriptive and redundant with existing sections. However, we do agree that it should be clear that grazing and pasture management practices must be explicitly described in the OSP and we have incorporated this requirement in to section 205.237(d).

We strongly disagree with the proposed requirements of 205.240(d) for a “sacrificial pasture”. Requiring each organic livestock producer to have a sacrificial pasture that meets all of the characteristics outlined in the proposed rule is contradictory to the basic tenants of organic production outlined in 205.200 and is untenable for all but a handful of producers. Sacrificial pastures with the qualities described in the proposed regulations (big enough for all animals, good trafficability, well drained, low risk of erosion, low risk of manure runoff, surrounded by vegetative areas and easily restored), do not necessarily exist at all dairy sites. Use of any pasture in the manner described would often go against basic tenets of animal health and welfare, and would require producers to violate other government regulations, such as those of local water quality standards. It would also put organic certifiers in an impossible situation regarding enforcement. Including this type of requirement in the proposed regulations is attempting to regulate best management practices, which was not the intent of OFPA and should be avoided. We believe the same consumers who envision a pasture-

based system would agree that forcing producers to destroy part of their operation in order to leave animals on pasture during conditions not conducive to pasturing in the first place is inappropriate and unrealistic.

For many operations, converting one of their current pastures to a sacrificial pasture would have a large financial impact, as they could no longer use these pastures for regular grazing or feed production. Land costs in California and many other parts of the country are extremely high, which precludes producers from simply acquiring more land to use as a sacrificial pasture, if such a piece of property could even be found. Additionally, as it takes a significant period of time to restore a pasture that has been degraded by animals during inclement weather, as written, the proposed regulations would mean that a livestock producer would need to "sacrifice" multiple pastures in order to ensure that they are restored as required. In addition to the detrimental effect on soil and water quality that would result from the use of a sacrificial pasture, animal health is also at risk as cows are forced to stand in mud pits during times of heavy rain or snow. Rather than instituting regulations which would require dairymen to sacrifice not only their pastures, but also the health of their animals, we instead recommend that the regulations allow for confinement of animals off pasture for reasons of inclement weather and risk to soil or water quality, and we recommend removing any reference to sacrificial pasture from the regulations.

CCOF recommends the deletion of the entire section §205.240. We believe that all of these issues are addressed in the producer's Organic System Plan which must be approved by the certifier. Since pasture is now defined as a crop, producers would be required to detail their pasture management practices in the Organic System Plan. The detail presented in this section would be appropriate for guidance documents, but not for regulatory text.

CONCLUSION

Once the public comments have been considered and a final rule written, CCOF requests that the NOP allow for an 18 month implementation period for the changes to take effect after publication in the Federal Register. We believe this period is necessary to take into account the time required for the following: notification and education of producers regarding the changes; modification and implementation of changes to the Organic System Plan, review checklists, inspection report forms and other quality system documents; and analysis of our client base for compliance.

We appreciate the time of the NOP staff to take our comments under consideration. We recognize that pasture grazing for ruminants is a complex issue and we that it is extremely important to all stakeholders that a final rule is published which is fair, comprehensible, and effective. If you have any questions about our comments, we would be happy to discuss them further. Again, we appreciate the opportunity to submit these comments.

Sincerely,



Robin Allan
Grower & Livestock Certification Supervisor

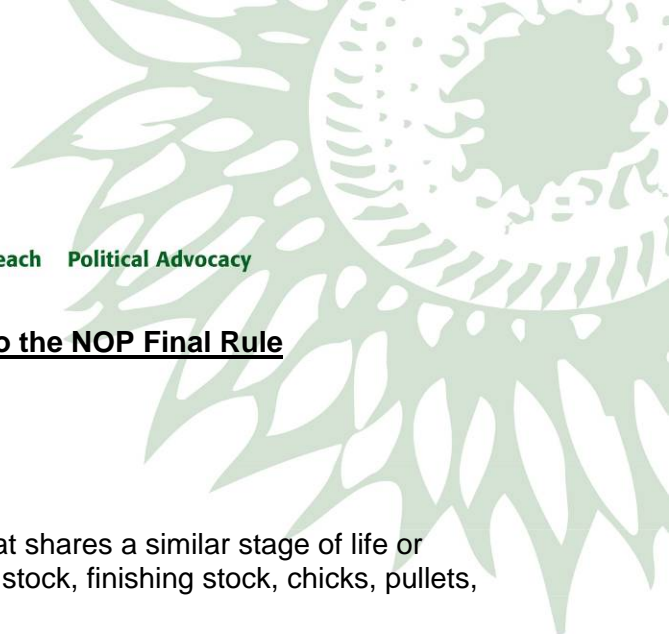
Enclosed:

1. CCOF recommended regulation wording
2. Current Proposed Recommendation in ~~strikeout~~ with CCOF wording
3. CCOF guidance document on Access to Pasture and Confinement



CCOF

Organic Certification Trade Association Education & Outreach Political Advocacy



CCOF recommended wording for revisions to the NOP Final Rule

7 CFR PART 205—NATIONAL ORGANIC PROGRAM

§ 205.2 Terms Defined.

* * * * *

Class of animal. The segment of a herd or flock of livestock that shares a similar stage of life or production; for example: calves, heifers, lactating animals, dry stock, finishing stock, chicks, pullets, layers.

Crop. Pastures, cover crops, green manure crops, catch crops, and any plant or part of a plant intended to be marketed as an agricultural product or fed to livestock.

* * * * *

Graze. (1) The consumption of standing forage by livestock.
(2) To put livestock to feed on standing forage.

Grazing. To graze.

Grazing season. The time(s) of year when pasture growth is possible from natural precipitation or irrigation and is available for livestock to graze. Grazing season(s) dates may vary because of mid-summer heat, humidity, significant precipitation events, floods, hurricanes, droughts or other weather events.

* * * * *

Inclement weather. Weather that is violent, or characterized by temperatures (high or low), that can cause physical harm to a given species of livestock. Livestock production yields or growth rates lower than the maximum achievable are not to be considered physical harm.

* * * * *

Livestock. Any cattle, sheep, goats, swine, poultry, equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; or other nonplant life, except such term shall not include aquatic animals or bees for the production of food, fiber, feed, or other agricultural-based consumer products.

* * * * *

Shelter. 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.

Stage of life. A discrete time period in an animals' life which requires specific management practices different than during other periods; such as: calves, chicks, etc. Lactation, breeding and other recurring events are not a stage of life.

* * * * *

Temporary and Temporarily. Occurring for a limited time only (e.g., overnight, throughout a storm, during a period of illness), not permanent or lasting.

* * * * *

§ 205.236 Origin of livestock.

(a) Livestock products that are to be sold, labeled, or represented as organic must be from livestock under continuous organic management from the last third of gestation or hatching: Except, That,

(1) Poultry. Poultry or edible poultry products must be from poultry that has been under continuous organic management beginning no later than the second day of life;

(2) Dairy animals. Milk or milk products must be from animals that have been under continuous organic management beginning no later than 1 year prior to the production of the milk or milk products that are to be sold, labeled, or represented as organic, *Except*,

(i) That, crops and forage from land, included in the organic system plan of a dairy farm, that is in the third year of organic management may be consumed by the dairy animals of the farm during the 12-month period immediately prior to the sale of organic milk and milk product; and

(ii) That, when an entire, distinct herd is converted to organic production, the producer may, *provided* no milk produced under this subparagraph enters the stream of commerce labeled as organic after June 9, 2007: (a) For the first 9 months of the year, provide a minimum of 80-percent feed that is either organic or raised from land included in the organic system plan and managed in compliance with organic crop requirements; and (b) Provide feed in compliance with § 205.237 for the final 3 months.

(iii) Once an entire, distinct herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation.

(3) Breeder stock. Livestock used as breeder stock may be brought from a non-organic operation onto an organic operation at any time: Provided, That, if such livestock are gestating and the offspring are to be raised as organic livestock, the breeder stock must be brought onto the facility no later than the last third of gestation.

(b) The following are prohibited:

(1) Livestock or edible livestock products that are removed from an organic operation and subsequently managed on a nonorganic operation may be not sold, labeled, or represented as organically produced.

(2) Breeder or dairy stock that has not been under continuous organic management since the last third of gestation may not be sold, labeled, or represented as organic slaughter stock.

(c) The producer of an organic livestock operation must maintain records sufficient to preserve the identity of all organically managed animals and edible and non-edible animal products produced on the operation.

§ 205.237 Livestock feed.

(a) The producer of an organic livestock operation must provide livestock with a total feed ration composed of certified organic agricultural products, including pasture and forage, except as provided in § 205.236(a)(i) or § 205.101(a): Except, That, synthetic substances allowed under § 205.603 and nonsynthetic substances may be used as feed additives and supplements, Provided, That, all agricultural ingredients in such additives and supplements shall have been produced and handled organically.

(b) The producer of an organic operation must not:

(1) Use animal drugs, including hormones, to promote growth;

(2) Provide feed supplements or additives in amounts above those needed for adequate nutrition and health maintenance for the species at its specific stage of life;

(3) Feed plastic pellets for roughage;

(4) Feed formulas containing urea or manure;

(5) Feed mammalian or poultry slaughter by-products to mammals or poultry;

(6) Use feed, feed additives, and feed supplements in violation of the Federal Food, Drug, and Cosmetic Act;

(7) Provide feed or forage which contains an antibiotic; or

(8) Prevent ruminant animals from accessing pasture during the grazing season(s), except as provided for in § 205.239(b) or (c). The grazing season(s) must not be less than 120 days per year total. Due to weather, season or climate, the grazing season(s) may or may not be continuous.

(c) Producers shall:

(1) Describe the total feed ration for each species and class of animal. The description must include:

- (i) All feed produced on-farm;
- (ii) All feed purchased from off-farm sources;
- (iii) The percentage of each feed type, including pasture, in the total ration; and,
- (iv) A list of all feed supplements and additives.

(2) Document the amount of each type of feed actually fed to each species and class of animal.

(d) The organic system plan required in section 205.201 must include a description of pasture management, including: frequency and duration of grazing, planting, watering, harvesting, shade and water sources, and other attributes as applicable.

§ 205.238 Livestock health care practice standard.

(a) The producer must establish and maintain preventive livestock health care practices, including:

- (1) Selection of species and types of livestock with regard to suitability for site-specific conditions and resistance to prevalent diseases and parasites;
- (2) Provision of a feed ration sufficient to meet nutritional requirements, including vitamins, minerals, protein and/or amino acids, fatty acids, energy sources, and fiber (ruminants);
- (3) Establishment of appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites;
- (4) Provision of conditions which allow for exercise, freedom of movement, and reduction of stress appropriate to the species;
- (5) Performance of physical alterations as needed to promote the animal's welfare and in a manner that minimizes pain and stress; and
- (6) Administration of vaccines and other veterinary biologics.

(b) When preventive practices and veterinary biologics are inadequate to prevent sickness, a producer may administer synthetic medications: Provided, That, such medications are allowed under § 205.603. Parasiticides allowed under § 205.603 may be used on

- (1) Breeder stock, when used prior to the last third of gestation but not during lactation for progeny that are to be sold, labeled, or represented as organically produced; and
- (2) Dairy stock, when used a minimum of 90 days prior to the production of milk or milk products that are to be sold, labeled, or represented as organic.

(c) The producer of an organic livestock operation must not:

- (1) Sell, label, or represent as organic any animal or edible product derived from any animal treated with antibiotics, any substance that contains a synthetic substance not allowed under § 205.603, or any substance that contains a nonsynthetic substance prohibited in § 205.604.
- (2) Administer any animal drug, other than vaccinations, in the absence of illness;
- (3) Administer hormones for growth promotion;
- (4) Administer synthetic parasiticides on a routine basis;
- (5) Administer synthetic parasiticides to slaughter stock;
- (6) Administer animal drugs in violation of the Federal Food, Drug, and Cosmetic Act; or
- (7) Withhold medical treatment from a sick animal in an effort to preserve its organic status. All appropriate medications must be used to restore an animal to health when methods acceptable to organic production fail. Livestock treated with a prohibited substance must be clearly identified and shall not be sold, labeled, or represented as organically produced.

§ 205.239 Livestock living conditions.

(a) The producer of an organic livestock operation must establish and maintain year-round livestock living conditions which accommodate the health and natural behavior of animals. Producers shall provide, as suitable to the species, its stage of life, the climate, and the environment:

(1) Year-round access for all animals to the outdoors, except as provided for in paragraphs (b) and (c) of this section; shade and shelter as necessary, exercise areas, fresh air, direct sunlight, and clean water for drinking.

(2) For all ruminants, management on pasture and daily grazing during the grazing season(s), except as provided for in paragraphs (b) or (c) of this section

(3) Appropriate clean, dry bedding, as necessary. If such bedding material is typically fed to the animal species, it must comply with the feed requirements of § 205.237.

(4) Shelter, as needed, designed to allow for:

(i) Natural maintenance, comfort behaviors, and opportunity to exercise;

(ii) Temperature level, ventilation, and air circulation suitable to the species; and

(iii) Reduction of potential for livestock injury;

(b) The producer of an organic livestock operation may temporarily deny an animal access to the outdoors because of:

(1) Inclement weather and conditions caused by 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; or

(4) Risk to soil or water quality

(5) Preventative health care procedures

(6) Temporary management situations, such as weaning, shearing, breeding, shipping or branding

(c) The producer of an organic livestock operation may temporarily deny a ruminant animal pasture under the following conditions:

(1) When the animal is segregated for treatment of illness or injury (lactation is not an illness or injury)

(2) For short time periods prior to parturition (birthing), parturition, after parturition, and at dry off as medically necessary for the animals' health;

(3) In the case of newborns for up to six months, after which they must be on pasture and may no longer be individually housed;

(4) In the case of dairy animals, for short periods daily for milking. Milking practices, such as frequency and duration, cannot be used to deny dairy animals maximum grazing time; and

(5) Ruminant slaughter stock for a finishing period which may not exceed one fifth (1/5) of the animal's total life or 120 days, whichever is shorter.

(d) The producer of an organic livestock operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms and optimizes recycling of nutrients and must manage pastures and other outdoor access areas in a manner that does not put soil or water quality at risk.



CCOF

Organic Certification Trade Association Education & Outreach Political Advocacy

CCOF recommended wording for revisions to the NOP Final Rule with current Proposed Regulation wording

Additions in **Red**, Deletions in ~~Strikeout~~

CFR PART 205—NATIONAL ORGANIC PROGRAM

§ 205.2 Terms Defined.

* * * * *

Class of animal. The segment of a herd or flock of livestock that shares a similar stage of life or production; for example: calves, heifers, lactating animals, dry stock, finishing stock, chicks, pullets, layers.

~~Crop. Pastures, ~~seed~~, cover crops, green manure crops, catch crops, and any plant or part of a plant intended to be marketed as an agricultural product, or fed to livestock, or used in the field to manage nutrients and soil fertility.~~

* * * * *

~~Dry matter. The amount of a feedstuff remaining after all the free moisture is evaporated out.~~

~~Dry lot. A confined area that may be covered with concrete, but that has no vegetative cover.~~

* * * * *

~~Feedlot. A confined area for the controlled feeding of ruminants.~~

* * * * *

Graze. (1) The consumption of standing forage by livestock.
(2) To put livestock to feed on standing forage.

Grazing. To graze.

Grazing season. The time(s) of year when pasture growth is possible from natural precipitation or irrigation and is available for livestock to graze. Grazing season(s) dates may vary because of mid-summer heat, humidity, significant precipitation events, floods, hurricanes, droughts or other weather events.

~~Growing season. The period of time between the average date of the last killing frost in the spring to the average date of the first killing frost in the fall or early winter in the local area of production. This represents a temperature threshold of 28 degrees Fahrenheit (3.0 degrees Celsius) or lower at a frequency of 5 years in 10. Growing season may range from 121 days to 365 days.~~

* * * * *

Inclement weather. Weather that is violent, or characterized by temperatures (high or low), that can kill or cause permanent physical harm to a given species of livestock. **Livestock production yields or growth rates lower than the maximum achievable are not to be considered physical harm.**

* * * * *

~~Killing frost. A frost that takes place at temperatures between 25 degrees and 28 degrees Fahrenheit (- 2.2 and - 3.9 degrees Celsius) for a period sufficiently severe to end the growing season or delay its beginning.~~

* * * * *

Livestock. Any ~~bee,~~ cattle, sheep, goats, swine, poultry, equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; ~~fish used for food;~~ wild or domesticated game; or other nonplant life, **except such term shall not include aquatic animals or bees for the production of food, fiber, feed, or other agricultural-based consumer products.**

* * * * *

~~Sacrificial pasture. A pasture or pastures within the pasture system, of sufficient size to accommodate all animals in the herd without crowding, where animals are kept for short periods during saturated soil conditions to confine pasture damage to an area where potential environmental impacts can be controlled. This pasture is then deferred from grazing until it has been restored through active pasture management. Sacrificial pastures are located where soils have good trafficability, are well drained, have low risk of soil erosion, have low or no potential of manure runoff, are surrounded by vegetated areas, and are easily restored. A sacrificial pasture is land used for livestock grazing that is managed to provide feed value and maintain or improve soil, water, and vegetative resources; it is not a dry lot or feedlot.~~

Shelter. 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.

Stage of life. A discrete time period in an animals' life which requires specific management practices different than during other periods; such as: calves, chicks, etc. Lactation, breeding and other recurring events are not a stage of life.

* * * * *

Temporary and Temporarily. Occurring for a limited time only (e.g., overnight, throughout a storm, during a period of illness, ~~the period of time specified by the Administrator when granting a temporary variance~~), not permanent or lasting.

* * * * *

§ 205.102 Use of the term, “organic.”

* * * * *

(a) Produced in accordance with the requirements specified in § 205.101 or §§ 205.202 through 205.207 or §§ 205.236 through 205.240~~39~~ and all other applicable requirements of part 205; and

* * * * *

§ 205.236 Origin of Livestock.

(a) * * *

(2) * * *

(iii) Once an ~~operation~~**entire, distinct herd** has been ~~certified for~~ **converted to** organic production using the exception in paragraph (a)(2)(i) or (ii) of this section, all dairy animals brought onto the ~~operation~~ shall be under organic management from the last third of gestation.

* * * * *

§ 205.237 Livestock feed.

(a) The producer of an organic livestock operation must provide livestock with a total feed ration composed of agricultural products, including pasture and forage, that are organically produced by operations certified to the NOP, except as provided in § 205.236(a)(i)), and, if applicable, organically handled by operations certified to the NOP: Except, That, synthetic substances allowed under § 205.603 and nonsynthetic substances may be used as feed additives and supplements, Provided, That, all agricultural ingredients in such additives and supplements shall have been produced and handled organically.

(b) * * *

* * * * *

(5) Feed mammalian or poultry slaughter by-products to mammals or poultry;

(6) Use feed, feed additives, and feed supplements in violation of the Federal Food, Drug, and Cosmetic Act;

(7) Provide feed or forage to which anyone, at anytime, has added an antibiotic; or

(8) Prevent, withhold, restrain, or otherwise restrict ruminant animals from actively obtaining food grazed from ~~accessing~~ pasture during the growing ~~growing~~ season(s), except for ~~as described under~~ **as provided for in § 205.239(b) or (c). The grazing season(s) must not be less than 120 days per year total. Due to weather, season or climate, the grazing season(s) may or may not be continuous.**

(c) ~~During the growing 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, once a month, on a monthly basis:~~

(1) ~~Document each feed ration (i.e., for each type of animal, each class of animal's intended daily diet showing all ingredients, daily pounds of each ingredient per animal, each ingredient's percentage of the total ration, the dry matter percentage for each ingredient, and the dry matter pounds for each ingredient);~~ **Describe the total feed ration for each species and class of animal.**

The description must include:

(i) All feed produced on-farm;

(ii) All feed purchased from off-farm sources;

(iii) The percentage of each feed type, including pasture, in the total ration; and,

(iv) A list of all feed supplements and additives.

(2) ~~Document the daily dry matter demand of each class of animal using the formula: Average Weight/Animal (lbs) x .03 = lbs DM/Head/Day x Number of Animals = Total DM Demand in lbs/Day;~~ **amount of each type of feed actually fed to each species and class of animal.**

(3) ~~Document how much dry matter is fed daily to each class of animal; and~~

(4) ~~Document the percentage of dry matter fed daily to each class of animal using the formula: (DM Fed ÷ DM Demand in lbs/day) x 100 = % DM Fed.~~

(d) The organic system plan required in section 205.201 must include a description of pasture management, including: frequency and duration of grazing, planting, watering, harvesting, shade and water sources, and other attributes as applicable.

§ 205.239 Livestock living conditions.

(a) The producer of an organic livestock operation must establish and maintain year round livestock living conditions which accommodate the health and natural behavior of animals;

~~including those listed in paragraphs (a)(1) through (a)(3) of this section. Further, producers shall not prevent, withhold, restrain, or otherwise restrict animals from being outdoors, except as otherwise provided in paragraph (b) and (c) of this section. Producers shall also provide, as~~ suitable to the species, its stage of life, the climate, and the environment:

(1) Year-round access for all animals to the outdoors, ~~except as provided for in paragraphs (b) and (c) of this section, shade, and shelter as necessary, 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~~ and clean water for drinking.

(2) For all ruminants, ~~continuous year-round~~ management on pasture and daily grazing during the grazing season(s), except as otherwise provided for in paragraphs (b) or (c) of this section. ~~for:~~

~~(i) Grazing throughout the growing season; and~~

~~(ii) Access to the outdoors throughout the year, including during the non-growing season. Dry lots and feedlots are prohibited.~~

(3) Appropriate clean, dry bedding, as necessary. ~~When hay, straw, ground cobs, or other crop matter~~ If such bedding material is typically fed to the animal species is used as bedding, it must comply with the feed requirements of § 205.237.

* * * * *

(b) The producer of an organic livestock operation may temporarily deny an ~~non-ruminant~~ animal access to the outdoors because of:

(1) Inclement weather and conditions caused by 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;

~~or~~

(4) Risk to soil or water quality;

(5) Preventative health care procedures; or

(6) Temporary management situations, such as weaning, shearing, breeding, shipping or branding.

* * * * *

(c) The producer of an organic livestock operation may temporarily deny a ruminant animal pasture under the following conditions:

(1) When the animal is segregated for treatment of illness or injury (the various life stages, such as lactation, are is not an illness or injury);

(2) ~~One week~~ For short time periods prior to parturition (birthing), parturition, and up to one week after parturition, and at dry off as medically necessary for the animals' health;

(3) In the case of newborns for up to six months, after which they must be on pasture and may no longer be individually housed;

~~(4) In the case of goats, during periods of inclement weather;~~

~~(5) In the case of sheep, 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 practices, such as frequencies or and duration, practices cannot be used to deny dairy animals pasture.~~ maximum grazing time; and

(5) Ruminant slaughter stock for a finishing period which may not exceed one fifth (1/5) of the animal's total life or 120 days, whichever is shorter.

~~(d) Ruminants must be provided with:~~

- ~~(1) A lying area with well-maintained clean, dry bedding, which complies with paragraph (a)(3) of this section, during periods of temporary housing, provided due to temporary denial of pasture during conditions listed in paragraphs (c)(1) through (c)(5) of this section;~~
- ~~(2) Yards and passageways kept in good condition and well-drained;~~
- ~~(3) Shade and in the case of goats, shelter open on at least one side;~~
- ~~(4) Water at all times except during short periods for milking or sheering—such water must be protected from fouling;~~
- ~~(5) Feeding and watering equipment that are designed, constructed, and placed to protect from fouling—such equipment must be cleaned weekly; and~~
- ~~(6) In the case of newborns, hay in a rack off the ground, beginning 7 days after birth, unless on pasture, and pasture for grazing in compliance with § 205.240(a) not later than six months after birth.~~

The producer of an organic livestock operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms and optimizes recycling of nutrients **and must manage pastures and other outdoor access areas in a manner that does not put soil or water quality at risk.**

* * * * *

- ~~(f) 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; this includes the use of fences and buffer zones to prevent ruminants and their waste products from entering ponds, streams, and other bodies of water. Buffer zone size shall be extensive enough, in full consideration of the physical features of the site, to prevent the waste products of ruminants from entering ponds, streams, and other bodies of water.~~

~~§ 205.240 Pasture practice standard.~~

~~The producer of an organic livestock operation must, for all ruminant livestock on the operation, demonstrate through auditable records in the organic system plan, a functioning management plan for pasture that meets all requirements of §§ 205.200—205.240.~~

- ~~(a) Pasture must be managed as a crop in full compliance with §§ 205.200 through 205.206.~~
- ~~(b) The producer must develop and annually update a comprehensive pasture plan for inclusion in the producer's organic system plan. When there is no change to the previous year's comprehensive pasture plan the certified operation may resubmit the previous year's comprehensive pasture plan.~~
- ~~(c) The comprehensive pasture plan must include a detailed description of:

 - ~~(1) Crops to be grown in the pasture and haymaking system;~~
 - ~~(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 growing 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 growing season;~~
 - ~~(3) The haymaking system;~~
 - ~~(4) The location of pasture and haymaking fields, including maps showing the pasture and haymaking system and giving each field its own identity;~~
 - ~~(5) The types of grazing methods to be used in the pasture system;~~
 - ~~(6) The location and types of fences and the location and source of shade and water;~~~~

- ~~(7) The soil fertility, seeding, and crop rotation systems;~~
- ~~(8) The pest, weed, and disease control practices;~~
- ~~(9) The erosion control and protection of natural wetlands, riparian areas, and soil and water quality practices;~~
- ~~(10) Pasture and soil sustainability practices; and~~
- ~~(11) Restoration of pastures practices.~~
- ~~(d) The pasture system must include a sacrificial pasture, for grazing, to protect the other pastures from excessive damage during periods when saturated soil conditions render the pasture(c) too wet for animals to graze. The sacrificial pasture must be:~~
 - ~~(1) Sufficient in size to accommodate all animals in the herd without crowding;~~
 - ~~(2) Located where:~~
 - ~~(i) Soils have good trafficability;~~
 - ~~(ii) Well drained;~~
 - ~~(iii) There is a low risk of soil erosion;~~
 - ~~(iv) There is low or no potential of manure runoff;~~
 - ~~(v) Surrounded by vegetated areas; and~~
 - ~~(vi) Easily restored.~~
 - ~~(3) Managed to:~~
 - ~~(i) Provide feed value; and~~
 - ~~(ii) Maintain or improve soil, water, and vegetative resources.~~
 - ~~(4) Restored through active pasture management.~~
- ~~(e) In addition to the above, producers must manage pasture to comply with all applicable requirements of §§ 205.236—205.239.~~

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§ 205.290 Temporary variances.

(a) Temporary variances from the requirements in §§ 205.203 through 205.207, 205.236 through 205.240³⁹ and 205.270 through 205.272 may be established by the Administrator for the following reasons:

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CCOF

Organic Certification Trade Association Education & Outreach Political Advocacy

CCOF Guidance Document:

Livestock Access to Pasture, Temporary Confinement, Stocking Densities and Replacement Animals

While the NOP regulations simply require “access” to pasture for organic ruminants, it has become increasingly clear that the intent of the regulations, and the practice which CCOF will require of our certified operators, is that **all able animals must be not only granted access to pasture, but also housed in an environment which encourages grazing and where pasture provides a significant portion of the daily dry matter intake.** Pasture grazing must be on a daily basis, restricted only by factors outside of the manager’s control, such as weather. To clarify: animals may be kept off pasture for their own well being. Young calves may be kept in hutches for their safety, and close-up’s and sick animals may be kept in the corrals for health monitoring and treatments. Milk animals may be kept off pasture to protect soil or water quality, for instance during periods of heavy rain when grazing animals would contribute to erosion. Other than during these periods, all organic animals, including all milk animals, must be provided with daily access to pasture. It is acceptable to graze the animals during the mornings and evenings, and not at mid-day in order to protect the animals from the heat of the sun.

To ensure that the intent of the NOP is being met, CCOF requires that animals not only be given access to pasture, but provided with an environment which is conducive to grazing. In the case that animals have access to pasture and corrals but animals stay in the corrals due to animal habituation and/or because shade and feed are provided in the corrals, the manager will need to develop a system to actively ensure that the cows leave the corrals, such as herding them out to the pasture and closing the gate behind them.

While the grazing season must be described in the OSP, pasture access must be provided to animals on any day that conditions allow, whether or not it is during the defined grazing season. A narrow definition of the grazing season does not alleviate the requirement to allow pasture access at all appropriate times. Reasons for keeping animals confined from pasture must be documented. Documentation of confinement periods must include the animals confined (by herd or pen number), duration of confinement and the reason for confinement. Confinement of the animals from pasture may not occur due to holidays or employee vacations, or for ease of management. Sufficient staff must be maintained to ensure that the animals are given access to pasture at all appropriate times.

CCOF’s policy on animal stocking densities is that there must have enough pasture available to allow animals to be grazed at densities where pasture provides a significant portion of the organic herd’s feed ration. This realistically often means that if animals are grazed at more than three to five animals per acre, practices such as intensive rotational grazing must be employed in order to remain in compliance.

All *replacement* animals must be organic from the last third of gestation. Full compliance with the spirit of the law will mean either raising organic calves organically until maturity, or finding a source of animals that are organic since the last third of gestation to purchase as replacements.

References: 7CFR Part 205.236, 205.237, 205.238 & 205.239

Implemented, September 2007, Revised June 5, 2008