National Milk Producers Federation

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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

December 23, 2008

RE: National Organic Program (NOP) – Access to Pasture (Livestock), Proposed Rule, Docket No. AMS–TM–06–0198; TM–05–14

Dear Mr. Mathews:

The National Milk Producers Federation (NMPF) is submitting the following comments to the United States Department of Agriculture's (USDA) National Organic Program (NOP) – Access to Pasture (Livestock), Proposed Rule, Docket No. AMS–TM–06–0198; TM–05–14. The National Milk Producers Federation, based in Arlington, VA, develops and carries out policies that advance the well being of dairy producers and the cooperatives they own. The members of NMPF's 31 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of more than 40,000 dairy producers on Capitol Hill and with government agencies.

Many of the member cooperatives of NMPF and their dairy farmers are producing or have expressed an interest in producing organic milk. In addition, many of the manufacturing facilities owned by NMPF members are processing or have expressed an interest in manufacturing organic dairy products. Therefore, this proposed rule on access to pasture for the National Organic Program is of great interest to NMPF.

NMPF does not support the proposed NOP regulations for access to pasture because the proposed rule is neither size nor geographically neutral. Additionally, the proposed rules are arbitrary; not based on any scientific animal health or dairy product safety rationale. NMPF believes that the

proposed rule will stifle the opportunity of additional dairy producers to enter organic production and will cause some organic dairy producers to leave organic dairy production.

NMPF supports NOP regulations for access to pasture which are size-neutral thereby allowing any dairy producer the opportunity to become an organic milk producer if so desired. NMPF believes that the current NOP regulations for access to pasture are adequate for dairy livestock under the principles of organic livestock production and management. Prior to NOP regulations, many individual state programs existed with varying degrees of regulation and oversight, for the production and processing of organic products which caused confusion for both consumers and producers. NOP regulations have provided producers across the country with an equitable playing field and consumers with a consistent supply of organic products.

NMPF recognizes that the NOP has created uniformity in organic production and processing. This national program enables any dairy producer or dairy products manufacturer to participate in an organic certification program and comply with the regulations. Ultimately, this national program protects the consumer who purchases these products by providing regulations that must be followed. Strong enforcement of the program's regulatory provisions are necessary to ensure that everyone involved in producing, manufacturing, and selling organic products is regulated under the same rules.

NMPF believes that current regulations related to pasture access provide dairy producers, dairy product manufacturers, and consumers clear measures necessary for the production of organic milk. To that end, current NOP regulations are clearly delineated so that dairy producers can accurately assess whether the three-year transition from traditional to organic milk production is appropriate for their individual farm. For those dairy producers who have opted to produce organic milk and have completed the three-year transition, changes in regulations could dramatically disrupt the availability of organic milk products for those consumers who desire them.

In this proposal, USDA cites the overwhelming response of comments as reason to change the access to pasture requirements. However USDA acknowledges that all but approximately 250 comments were "a modified form letter" which while representing opinions of those commentators, did not provide scientific animal health or dairy product safety rationale to support the changes. NMPF disagrees with USDA that the volume of commentators is the correct measure to make changes in these regulations; rather changes should be grounded in science based upon animal health and dairy product safety.

Access to pasture has been carefully examined by the National Organics Standards Board (NOSB) numerous times over the past decade. There is

definitively no basis within scientific peer-reviewed literature to support a minimum amount of time or minimum amount of dry matter intake for dairy cattle derived from pasture to meet the nutritional needs of lactating dairy cows.[1] Nutrient requirements of dairy cattle are a function of physical (milk production, reproductive status, exercise, growth, etc.) and environmental (temperature, humidity, wind speed, etc.) factors which must be met through a combination of feeds (which can range from all pasture to all conserved feeds). An arbitrary imposition of a minimum of 120 days access and 30 percent of dry matter intake from pasture does not guarantee that the nutrient requirements of the dairy animal will be met. Rather, flexibility in feeding systems must be allowed in the NOP to ensure that dairy cattle nutrient needs can be met to maintain the health and productivity of the animal.

NMPF disagrees with USDA that "growing season" is an appropriate timeframe to mandate 30 percent of dry matter intake must be from pasture. Use of "growing season" as the timeframe for obtaining 30 percent dry matter intake does not take into account actual availability of feed or its nutritional quality. USDA assumes that on the first day of the "growing season" that 30 percent dry matter intake of nutritionally adequate feed will be available from pasture. Additionally, USDA assumes that availability and nutritional quality of feed on pasture is constant during the growing season. Other factors beyond freezing temperatures (such as the availability of water during the dry season) affect availability and quality of feed from pastures. Rather use of pasture as feed for dairy animals needs to account for different farming conditions, protect pastures from damage, prevent manure runoff contamination of waterways, and protect the health and safety of the livestock from adverse weather conditions.

Current pasture access regulations allow for some necessary flexibility in organic production and should be maintained. Potential exists, in the guise of access to pasture, to limit organic milk production by farm size or geographic regions. If these regulations are finalized with a minimum of 120 days access and 30 percent dry matter intake from pasture, many regions of dairy production may be unable to meet the requirements as the effective "growing season" is less than 120 days. For example, northern states in the U.S. (including many of the top milk producing states: Wisconsin, Idaho, New York, and Pennsylvania, Minnesota, Michigan, and Vermont) have significant areas where dairy production occurs which experience a "growing season" of less than 120 days[2]. These concerns are not different from many of the comments the NOSB received from organic dairy producers in response to the February 2005 recommendations to amend access to pasture requirements.

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[1] National Research Council. 2001. Nutrient Requirements of Dairy Cattle, Seventh Revised Edition. Washington, DC: National Academies Press.

[2] Freeze Free Period Map, 90% probability. National Climatic Data Center, National Oceanic and Atmospheric Administration. http://www.ncdc.noaa.gov/img/climate/freezefrost/Freezefree32F.pdf. Accessed December 23, 2008. Map attached.

Just as current NOP regulations provide necessary flexibility in geographic location of organic dairy production, the current pasture access regulations are size-neutral which allows any dairy producer the opportunity to choose an organic production process. Arbitrary imposition of new pasture requirements not founded in science will not result in clearer and more consistent regulations, and will not stimulate growth of the organic sector because a portion of the dairy producer community will be excluded from the opportunity to choose to produce organic milk. NMPF does not believe that altering NOP pasture access regulations which restrict opportunity for dairy producers to choose organic production is in the spirit of the NOP.

With a growing demand for organic dairy products which currently outpaces increases in supply coupled with the three-year process to transition from traditional to organic production, any changes that organic regulations could restrict current or future volumes of organic milk available in the market. A first result, a consequence of less supply combined with more demand, would be an increase in price of organic dairy products to the consumer. A second result of constricting the available organic milk supply is the incentive/opportunity to source organic dairy product needs other than domestically. Loss of our domestic market opportunities for organic dairy products to imported sources, for which we would likely have less understanding of the conditions under which those products were produced or processed than we have of our domestically sourced organic milk production, does not seem to be in the spirit of organic production. History would tell us that recovering domestic sales lost to imported sources is very difficult.

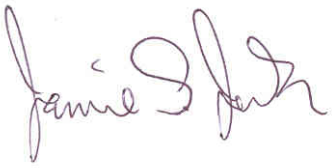
NMPF believes care must be used in defining any new or revised organic regulation. As issues pertaining to food safety are discussed (e.g., animal health, food processing), the appearance that conventional products are not as safe as organic products must be avoided. It must be stressed that the Food and Drug Administration (FDA) and USDA ensure the safety of the entire U.S. food supply through their individual enforcement activities. Organic regulations and any associated labeling must not either directly, or by implication, undermine current regulations promulgated by FDA and USDA as to their adequacy in protecting the public health.

To reiterate, NMPF believes that current regulations related to pasture access provide dairy producers, dairy product manufacturers, and consumers clear measures necessary for the production of organic milk. Proposed requirements for pasture access are not supported by peer-reviewed scientific literature to ensure the nutritional needs of lactating dairy cows are fulfilled. Additionally, a minimum of 120 days access and 30 percent dry matter intake from pasture is likely unachievable in many regions where dairy production occurs. As such, changing pasture access regulations could serve as a disincentive for dairy

producers to commit to the three-year transition process to supply the growing consumer demand for organic dairy products. Thusly, a possibility of restricting supply for the burgeoning consumer demands would likely increase cost to the consumer.

Thank you for the opportunity to submit these comments. The dairy industry looks forward to participating in the future with the further development of organic regulations. If you have any questions about these comments, please contact me.

Sincerely,



Jamie S. Jonker, Ph.D.
Director, Regulatory Affairs

Enc. (1) - Freeze Free Period Map, 90% probability. National Climatic Data Center, National Oceanic and Atmospheric Administration. http://www.ncdc.noaa.gov/img/climate/freezefrost/Freezefree32F.pdf. Accessed December 23, 2008.