



# National Milk Producers Federation

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July 13, 2016

Paul Lewis, Ph.D.  
Director Standards Division  
National Organic Program  
USDA-AMS-NOP  
Room 2646-So, Ag Stop 0268  
1400 Independence Ave SW  
Washington, DC 20250-0268

**RE: National Organic Program; Livestock and Poultry Practices (AMS-NOP-15-0012; NOP-15-06PR)**

Dear Dr. Lewis:

The National Milk Producers Federation (**NMPF**) is pleased to submit the following comments to the United States Department of Agriculture Agricultural Marketing Service National Organic Program (**USDA-AMS-NOP**) on the proposed rule Livestock and Poultry Practices (AMS-NOP-15-0012; NOP-15-06PR; **Proposed Rule**). 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 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of more than 32,000 dairy producers on Capitol Hill and with government agencies.

Many of the NMPF member cooperatives and their dairy farmers are producing organic milk. In addition, many of the manufacturing facilities owned by NMPF member cooperatives are manufacturing organic dairy products. As demand for organic dairy products increases, interest in producing organic milk continues from the farm through processing. NMPF believes that animal care and wellbeing are the responsibility of every dairy farmer regardless of size, location, production style, or marketing certifications and are an obligation for the entire dairy value chain. Therefore, this Proposed Rule on livestock and poultry practices for the USDA-AMS-NOP is of great interest to NMPF.

### **U.S. Dairy Industry Commitment to Animal Wellbeing**

In 2009 NMPF, with support from Dairy Management Inc., recognizing the importance in ensuring consistency in dairy animal care and wellbeing, launched the National Dairy FARM Program: Farmers Assuring Responsible Management™ (**FARM Program**). The Farm Program is a national on-farm education, evaluation, and verification program

designed to help dairy farmers assure high standards in animal care and wellbeing. First, the FARM program details animal care guidelines and best practices in the *FARM Animal Care Reference Manual*<sup>i</sup> that farmers must follow for every calf and cow on the farm – that evolve with the latest research on quality animal care. The manual and corresponding training videos detail the highest standards for animal care when it comes to animal health from birth to end of life including veterinary oversight in the development of protocols for the prevention, control, and treatment of common diseases. Protocols developed with veterinarians include judicious and responsible use of antibiotics. ***The FARM Program animal care guidelines and best practices are the same for organic and conventional dairy farms.***

Second, on-farm evaluations occur at least once every three years to provide dairy farmers feedback on conformance to the FARM Program Standards. Evaluators are veterinarians, extension educators, university personnel, co-op field staff or other qualified persons who have completed intensive training and have passed comprehensive exams. The evaluation provides farmers with the information they need to develop action plans for continuous improvement. ***The FARM Program on-farm evaluation process is the same for organic and conventional dairy farms.***

Third, the integrity of the program is ensured through third-party verification, which is completed by outside experts who inspect a representative percentage of farms each year. When the dairy industry says it's taking great care of its animals, third-party verification measures it – providing statistically verified data demonstrating that excellent animal care is an expectation of the dairy industry. The FARM Program has successfully completed five years of third-party verification with results published annually.<sup>ii</sup> ***The FARM Program third-party verification process is the same for organic and conventional dairy farms.***

Today, 84 dairy cooperatives and proprietary processors<sup>iii</sup> representing nearly 95 percent of the U.S. milk production are enrolled in the FARM Program. More than 40,000 on-farm evaluations have been conducted by the almost 400 certified FARM evaluators. Participation includes the largest organic milk dairy cooperative in the U.S. along with other cooperatives and proprietary processors with organic dairy farm suppliers. ***NMPF estimates about 95 percent of organic milk production is enrolled in the FARM Program and several thousand on-farm evaluations have been conducted.***

The success of the FARM Program has been embraced by the dairy value market chain. Walmart has lauded the FARM Program's success in advancing animal welfare.<sup>iv</sup> Leprino Foods requires U.S. dairy suppliers to participate in the FARM Program with compliance to standards and best practices by December 31, 2016.<sup>v</sup> Chobani founder and CEO Hamdi Ulukaya has stated "*the quality and sustainability of our products depends on the health and well-being of the animals on the farm*" and "*programs like National Dairy FARM Program have helped bring that language to life.*"<sup>vi</sup> Aldi

encourages its dairy farm suppliers to participate in the FARM Program.<sup>vii</sup> ***The FARM Program success has been demonstrated by dairy value market chain acceptance.***

### **General Comments**

NMPF believes that when a federal agency proposes regulatory changes, that agency must articulate the basis for that rule. A fundamental problem with the Proposed Rule is that it appears more driven by economics and consumer perception rather than animal science and welfare. Economic considerations are important and should be part of the rulemaking process, but so called “consumer confusion” about the meaning of “organic” should not drive rulemaking associated with animal wellbeing. USDA-AMS-NOP must use science as the basis for decisions involving animal wellbeing and educate consumers about the scientific underpinnings for a rule.

Dairy farmers base their care and wellbeing decisions based on input from their veterinarians and other animal care experts in alignment with the FARM Program standards. As previously explained, the FARM Program standards are based on the latest research on animal care. USDA-AMS-NOP cites, as authority to support some of the Proposed Rule changes, reports issued by the National Organic Standards Board (NOSB) – for example the December 2011 NOSB report, *Formal Recommendation of the National Organic Standards Board to the National Organic Program, Animal Welfare and Stocking Rates*.<sup>viii</sup> These reports, however, mostly contain basic information and do not cite scientific literature or provide scientific bases to support the proposal’s provisions. Instead, those reports largely are based on meetings in which members of the public are afforded an opportunity, likely in three-minute increments, to present their perspectives on many topics. Although public meetings serve a useful purpose by providing speaking opportunities and ensuring transparency, they do not absolve the USDA-AMS-NOP from developing regulatory requirements, particularly on topics such as animal welfare, based on the scientific literature. In some cases, the Proposed Rule standards are based on public perception of what is good animal welfare and reflect no consensus by experts in animal welfare and handling.

NMPF also has concerns that USDA-AMS-NOP may lack authority to implement regulations which prescribe practices regarding animal welfare, especially since some of these practices lack the explanation or support for animal care and wellbeing benefits. The Organic Foods Production Act of 1990<sup>ix</sup> (OFPA), 7 U.S.C. §§ 6501-6522, includes provisions in Section 2110 regarding “Animal Production Practices and Materials” (7 U.S.C § 6509). Subsection (c) of Section 2110 describes the practices required in an “organic plan.” Subsection (c) states:

“(c) Practices – For a farm to be certified under this title as an organic farm with respect to the livestock produced by such farm, producers on such farm –  
(1) shall feed such livestock organically produced feed that meets the requirements of this title;

- (2) shall not use the following feed –
- (A) plastic pellets for roughage;
  - (B) manure refeeding; or
  - (C) feed formulas containing urea; and
- (3) shall not use growth promoters and hormones on such livestock, whether implanted, ingested, or injected, including antibiotics and synthetic trace elements used to stimulate growth or production of such livestock.””

There is no mention of animal welfare practices or living conditions being a required part of an “organic plan.” As such, NMPF is concerned that this Proposed Rule goes beyond the statutory authority provided to USDA-AMS-NOP in regards to organic programs.

Furthermore, in section 2105 of the OFPA titled “National Standards for Organic Production,” Congress specifically identified those practices that must be utilized to qualify for the “organic” label. To qualify as “organic” livestock, the animals must be produced without the use of synthetic chemicals, and they must be produced in compliance with an organic plan as laid out above in Subsection (c). For a second time in the statute, no mention is made in regards to animal welfare standards or living condition requirements.

In the following, NMPF offers comments and proposed changes on specific sections of the Proposed Rule related to dairy cattle care and wellbeing, and USDA-AMS-NOP costs estimates. The comments reflect FARM Program animal care and wellbeing standards from the 2016 FARM Animal Care Manual revisions.<sup>x</sup> ***However, NMPF believes that the FARM Program assures animal care and wellbeing in the U.S. dairy industry and the changes proposed by USDA-AMS-NOP in the Proposed Rule are unnecessary and duplicative for dairy cattle.***

#### **§ 205.2 Definitions**

**§ 205.2 Outdoors** – The FARM Program standard is “*all age classes of animals are provided all reasonable means of protection from heat and cold.*” Cattle prefer and appear motivated to use shade<sup>xi</sup> and will readily do so when solar radiation increases.<sup>xii</sup> The Proposed Rule definition for “Outdoors” prevents the use of shade structure whether attached to an indoor living space or not. Prohibiting the use of a shade structure within the definition may lead to animal wellbeing issues.

The Proposed Rule also appears to favor dirt lots over vegetative matter in this definition. Various weather conditions can make dirt lots undesirable for dairy cattle, such as periods of extended rain when dirt become mud or freezing precipitation when dirt will be iced over. NMPF does not believe that USDA-AMS-NOP intended to exclude vegetative matter from the definition of “outdoors”.

With these two issues in mind, NMPF proposes changing the definition to:

“Outdoors. Any area in the open air with at least 50 percent soil or vegetative matter, outside a building or shelter where there are no solid walls or solid roof attached to the indoor living space structure. The use of a solid roof structure is allowed if necessary to provide animals means of protection from heat and cold.”

**§ 205.238 Livestock Health Care Practice Standard**

**§ 205.238(a)(5)** – Specific to painful procedures, the FARM Program standard is *“disbudding/dehorning before 8 weeks of age with pain mitigation provided in accordance with the recommendations of the herd veterinarian; and other planned medical procedures, including castration and extra teat removal, are performed at the earliest age possible with pain mitigation provided in accordance with the recommendation of the herd veterinarian.”* Certain painful procedures are necessary to ensure the safety of both the animals, and their trained handlers, on the farm. NMPF supports the revision as proposed.

**§ 205.238(a)(5)(ii)** – The FARM Program *“opposes the routine tail docking of dairy animals, except in the extraordinary case of traumatic injury to an animal. This practice is to be phased out by January 1, 2017.”* The Proposed Rule standard is unclear about allowances for traumatic injury to an animal. This ambiguity may lead to animal wellbeing issues. NMPF proposes changing the standard to:

“The following practices must not be performed on a certified operation except in the case of traumatic injury to the animal: de-beaking, de-snooding, caponization, dubbing, toe trimming of chickens, toe trimming of turkeys unless with infra-red at hatchery, beak trimming after 10 days of age, tail docking of cattle, wattling of cattle, face branding of cattle, tail docking of sheep shorter than the distal end of the caudal fold, and mulesing of sheep.”

**§ 205.238(a)(8)** – The FARM Program standard is *“ninety-five percent of the lactating and dry dairy herd scores a 2 or less on the NDFP [National Dairy FARM Program] Locomotion Scorecard (1 is sound, 2 is moderately lame, 3 is severely lame). The dairy has a written Herd Health Plan, developed in consultation with the Veterinarian of Record, that includes a written protocol for lameness prevention and treatment.”* The Proposed Rule only requires monitoring and recording of lameness but no requirement for action to improve the animal condition which may lead to animal wellbeing issues. Additionally, the Proposed Rule seems to allow for 100% lameness without consequence. NMPF proposes changing the standard to:

“Monitoring of lameness and keeping records of the percent of the herd or flock suffering from lameness and the causes. Protocols for prevention and treatment of lameness. Lameness should be measured and conform to industry animal care standards.”

**§ 205.238(b)(3)** – The FARM Program standard is “*written protocols for management of cattle that develop disease or become injured that specify procedures managing pain in all applicable age classes.*” Providing dairy farmers options for pain management is necessary to prevent animal wellbeing issues. Any synthetic substance for pain management will still require listing as an allowed substance in § 205.603 to be used for a defined purpose. Any addition of synthetic pain management substances will require proposal by USDA-AMS-NOP with notice and comment. NMPF supports the addition as proposed.

**§ 205.238(c)(1)** – NMPF expects waste milk from cows treated with USDA-AMS-NOP prohibited substances on organic dairy farms to be minimal or periodic. However, for sustainability reasons (both economic and environmental) using this waste milk on organic dairy calves should be allowed. Feeding waste milk from cows treated with USDA-AMS-NOP prohibited substances is not an animal wellbeing issue. NMPF proposes changing the standard to:

“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. Milk from animals undergoing treatment with synthetic substances allowed under § 205.603 having withholding time, cannot be sold as organic but may be fed to their own offspring. Milk from animals undergoing treatment with prohibited substances cannot be sold as organic but may be fed to pre-weaned organic dairy calves.”

**§ 205.238(c)(3)** – The standard on administration of hormones to organic livestock for production purposes both as in the Proposed Rule and current regulation is redundant. Any allowed hormone use still requires listing as an allowed substance in § 205.603 to be used for a defined purpose as is the case for oxytocin for “use in postparturition therapeutic applications.” Any additional allowance for hormone use will require proposal by USDA-AMS-NOP with notice and comment. NMPF recommends deleting this section.

**§ 205.238(c)(8)** – The FARM Program standard is for dairy farms to have “*a written Herd Health Plan, developed in consultation with the Veterinarian of Record, to prevent, treat and monitor incidence of common diseases.*” In addition, “Euthanasia in a timely manner, if warranted” according to American Association of Bovine Practitioners (**AABP**) or American Veterinary Medical Association (**AVMA**) guidelines is

required. Withholding treatment or timely euthanasia, when warranted, may lead to animal wellbeing issues. NMPF supports the addition as proposed.

**§ 205.238(c)(9)** – The FARM Program standard is *“Each animal is [to be] permanently identified”* and *“permanent, easily accessible drug treatment records are maintained and denote how all drugs were used and disposed.”* Lack of identification and lack of recordkeeping may lead to animal wellbeing or regulatory compliance issues. NMPF supports the addition as proposed.

**§ 205.238(d)** – The FARM Program standard is a *“written protocol for parasite, pest, and fly control.”* Pest control is part of an overall herd health program on dairy farms because vermin and parasites transmit diseases and interfere with the animals’ comfort leading to animal wellbeing issues. NMPF supports the addition as proposed.

**§ 205.238(e)(1-3)** – The FARM Program standard is a *“written protocol for Euthanasia that align with approved AABP and/or AVMA including: Designated employees trained to recognize animals to be euthanized and trained on proper technique, Carcass disposal in compliance with local regulations, Record of mortalities and causes.”* Timely euthanasia by trained personnel utilizing approved techniques prevents animal wellbeing issues. AABP and AVMA euthanasia guidelines, which are recognized worldwide as appropriate for euthanasia of livestock and poultry, include a requirement for confirmation of death. The Proposed Rule language is unnecessarily complicated. NMPF proposes changing the standard to:

“205.238(e) Euthanasia. Organic livestock producers must have written plans for prompt, humane euthanasia for sick or injured livestock when warranted. Plans must conform to American Veterinary Medical Association or livestock sector specific veterinary association guidelines including manner and confirmation of death.”

#### **§ 205.239 Mammalian Living Conditions**

**§ 205.239(a)(1)** – The FARM Program standard is *“sufficient feed bunk space is provided that allows all animals to feed at the same time or sufficient quantities of feed are available for all animals during a 24-hour period.”* The FARM Program uses body condition score as an outcome based measure for assessment. The Proposed Rule change *“in a manner that maintains all animals in good body condition”* conforms to FARM Program guidelines. NMPF supports the addition as proposed.

**§ 205.239(a)(3)** – The FARM Program standard is *“All age classes of cattle have a resting area that provides cushion, insulation, warmth, dryness and traction at all times when away from the milking facility”* which is accomplished through the use of bedding. The outcome-based measure is *“ninety percent or more of all animals in all*

*pens score 2 or less on the NDFP Hygiene Scorecard (1 is clean, 4 is dirty)."* The Proposed Rule does not have an outcome-based measurement to assess cleanliness. NMPF proposes changing the standard to:

"Animals must be kept clean during all stages of life with the use of appropriate, clean, dry bedding, as appropriate for the species. When roughages are used as bedding, they must be organically produced and handled in accordance with this part by an operation certified under this part, except as provided in § 205.236(a)(2)(i), and, if applicable, organically handled by operations certified to the NOP. Cleanliness should be measured and conform to industry animal care standards."

**§ 205.239(a)(4)(i)** – The FARM Program standard is *"housing allows all age classes of cattle to easily stand up, lie down, adopt normal resting postures and have visual contact with other cattle, without risk of injury."* Several outcome-based measures including body condition score, lameness score, hygiene score, and hock and knee score provide verification of the standard.

The Proposed Rule standard is not outcome-based but prescriptive requiring dairy cattle to "Sufficient space and freedom to lie down in full lateral recumbence, turn around, stand up, fully stretch their limbs without touching other animals or the sides of the enclosure, and express normal patterns of behavior." Stall systems are built at very specific dimensions for cow comfort, to allow cows to be kept as sanitary as possible, and provide for efficient manure removal. This Proposed Rule standard will allow dairy cattle to defecate and urinate on any part of the stall, soiling bedding, and reduce cow cleanliness (in conflict with § 205.239(a)(3)). This standard, which would effectively double the size requirements for dairy stalls, would lead to unsanitary living conditions and increased rates of mammary infection due to pathogen exposure. These are both animal wellbeing and food safety issues. There would need to be substantial redesign in current organic tie-stall and free-stall dairy facilities along with building additional housing to accommodate this standard as written in the Proposed Rule. USDA-AMS-NOP failed to account for such costs in the cost-benefit analysis (to be discussed in **Executive Orders 12866 and 13563** comment section). NMPF does not support this revision and does support the current standard.

**§ 205.239(a)(4)(iv)** – The FARM Program standard is *"Ninety-five percent or more of lactating and dry dairy herd score a 2 or less on the NDFP Hock and Knee Lesion Scorecard (1 is no hair loss/swelling, 2 is some hair loss; no swelling, 3 is severe swelling and/or abrasion through hide)"* and *"ninety percent or more of all animals in all pens score 2 or less on the NDFP Hygiene Scorecard (1 is clean, 4 is dirty)."* The Proposed Rule standard recognizes the importance of preventing lesions but provides no metric for measurement. The Proposed Rule standard also duplicates and confounds issues related to cleanliness (see for **§ 205.239(a)(3)** more detail). Finally, the Proposed Rule

standard duplicates and confounds issues related to stall size (see for **§ 205.239(a)(4)(i)** more detail). NMPF proposes changing the standard to:

“Areas for bedding and resting that are sufficiently maintained to prevent hock and knee lesions. Hock and knee lesions should be measured and conform to industry animal care standards.”

**§ 205.239(a)(6)** – The FARM Program standard is that a dairy farm “*has a written Herd Health Plan, developed in consultation with the Veterinarian of Record, to prevent, treat and monitor incidence of common diseases.*” The Herd Health Plan will include necessary cleaning and disinfection procedures. Additionally, sanitary procedures are required under the *Grade “A” Pasteurized Milk Ordinance*<sup>iii</sup>, with which all licensed dairy farms including organic farms, must comply. The Proposed Rule standard is unnecessary. NMPF does not support this addition.

**§ 205.239(a)(7)(i)** – The FARM Program allows for individual calf housing of pre-weaned calves with the standard of “*housing [that] allows all age classes of cattle to easily stand up, lie down, adopt normal resting postures and have visual contact with other cattle, without risk of injury.*” The Proposed Rule standard fulfills the same requirements. NMPF supports the addition as proposed.

**§ 205.239(a)(7)(ii)** – The FARM Programs encourages group housing of youngstock stating “*successful group rearing requires appropriate management, including feeding method and group size.*” However, there are conditions such as disease outbreaks or adverse weather conditions (such as temperature conducive to heat stress) where group housing could lead to an animal wellbeing issue. The Proposed Rule standard has no allowances for such events. NMPF proposes changing the standard to:

“Dairy youngstock should be group-housed after weaning. Exceptions may be made for adverse events such as weather or disease incidence.”

**§ 205.239(a)(7)(iii)** – Young dairy animals, even those older than six months of age, are more vulnerable than mature animals to predation by wild animals. The potential predation of more vulnerable animals, such as growing dairy animals, can be an animal wellbeing issue. NMPF believes that **§ 205.239(b)(3)** which allows for temporary confinement of animals when “conditions under which the health, safety, or well-being of the animal could be jeopardized” should apply to young dairy animals over six months of age which may be subject to predation by wild animals. For clarity, NMPF proposes changing **§ 205.239(b)(3)** to:

“Conditions under which the health, safety, or well-being of the animal could be jeopardized. This includes potential predation by wild animals of vulnerable animals such as youngstock.”

**§ 205.239(a)(11)** – A variety of housing systems are used by organic dairy farms. One type of housing system may include loose housing where feeding is done in a manger in front of stalls (similar to tie-stalls without tethering) while resting may occur in the same stalls or elsewhere (in accordance with USDA-AMS-NOP standards). In such cases, the FARM Program standard is sufficient feed stall *“space is provided that allows all animals to feed at the same time or sufficient quantities of feed are available for all animals during a 24-hour period.”* The Proposed Rule standard only allows this system for swine and would require dairy farms with such systems to either reduce the number of animals or build additional facilities. NMPF proposes changing the standard to:

“In confined housing with stalls, at least one stall must be provided for each animal in the facility at any given time. A cage must not be called a stall. For group-housed animals, the number of individual feeding stalls may be less than the number of animals, as long as all animals are fed routinely over a 24-hour period.”

**§ 205.239(a)(12)** – The Proposed Rule appears to favor dirt lots over vegetative matter in this standard. Various weather conditions can make dirt lots undesirable for dairy cattle, such as periods of extended rain when dirt become mud or freezing precipitation when dirt will be iced over. NMPF does not believe that USDA-AMS-NOP intended to exclude vegetative matter from outdoor access areas. NMPF proposes changing the standard to:

“At least 50 percent of outdoor access space by surface area must be soil or vegetative matter, except for temporary conditions which would threaten the soil or water quality when outdoor access must be provided without contact to the soil.”

**§ 205.239(b)(3)** – As previously discussed, young dairy animals, even those older than six months of age, are more vulnerable than mature animals to predation by wild animals. The Proposed Rule standard in § 205.239(a)(7)(iii) requires all dairy youngstock six months or older to have access to outdoors including pasture during the growing season. The potential predation of more vulnerable animals, such as growing dairy animals, can be an animal wellbeing issue. NMPF believes this standard should apply to young dairy animals over six months of age which may be subject to predation by wild animals. For clarity, NMPF proposes changing the standard to:

“Conditions under which the health, safety, or well-being of the animal could be jeopardized. This includes potential predation by wild animals of vulnerable animals such as youngstock.”

**§ 205.239(b)(7)** – Estrus occurs in sexually mature non-pregnant dairy cattle on average every 21 days, although there is some natural variation of plus or minus one-two days. Temporary confinement in enclosed pens either indoors or outdoors for detection of estrus is a reasonable management technique to allow dairy cattle to express their natural behavior. This natural behavior routinely includes visual activities such as mounting or being mounted by another animal. These visual activities are important for the farm owner or manager to accurately determine the estrus status of a dairy animal. Dairy cattle should not be tethered during this time. The Proposed Rule standard may limit the dairy farm owner or manager from accurately observing estrus. NMPF proposes changing the standard to:

“Breeding: Except, that, animals shall not be confined any longer than necessary to perform the natural or artificial insemination. Animals may be temporarily confined, but not tethered, in an enclosed pen to observe estrus; and”

**§ 205.239(b)(7)** – NMPF appreciates the clarification in the Proposed Rule that facilities for the exhibition or demonstration of animals for 4-H, National FFA Organization, and other youth projects are not required to be certified organic for participating animals so long as the animals are otherwise continuously provided organic management practices. Many organic dairy farms also desire to exhibit organic dairy cattle at fairs and exhibitions for a variety of reasons such as education of the public and establishment of superior type conformance for genetic merchandising opportunities. The Proposed Rule standard does not allow for exhibition of organic dairy cattle at fairs or exhibitions outside of those for youth projects. NMPF proposes changing the standard to:

“4-H, National FFA Organization, other youth projects, and commercial fair or exhibitions, for no more than one week prior to a fair or other demonstration, through the event, and up to 24 hours after the animals have arrived home at the conclusion of the event. These animals must have been maintained under continuous organic management, including organic feed, during the extent of their allowed confinement for the event. Notwithstanding the requirements in § 205.239 (b)(6), facilities where 4-H, National FFA Organization, other youth events and commercial fairs or exhibitions are held are not required to be certified organic for the participating animals to be sold as organic, provided all other organic management practices are followed.”

**§ 205.242 Transport and Slaughter**

**§ 205.242(a)(1)** – Organic dairy farms send individual cull cows to market periodically rather than pens or groups at the same time. Requiring an individual pen in the livestock trailer will cause an undue burden to organic dairy farms resulting in increased transportation costs and likely increased green-house gas emissions due to fewer animals per livestock transit trailer. This requirement confers no benefit to the

animal, farmer or the consumer. USDA-AMS-NOP failed to account for such costs in the cost-benefit analysis (to be discussed in **Executive Orders 12866 and 13563** comment section). NMPF does concur that organic livestock must be clearly identified during transport particularly when in a mixed pen. NMPF proposes changing the standard to:

“Certified organic livestock must either be clearly individually identified as organic and transported in pens within the livestock trailer for mixed use, or be clearly identified in a group as organic and transported in pens within the livestock trailer clearly labeled for organic use.”

**§ 205.242(a)(2)(ii)** – The FARM Program standard is *“the dairy has written protocols for culling and transporting to slaughter dairy animals, developed in consultation with the herd veterinarian.”* The culling and transporting protocol should include these elements:

- *“Do not move non-ambulatory animals to market under any circumstances.*
- *Make the decision to treat, to cull, or to euthanize animals promptly. Sick and injured animals should be segregated from the herd.*
- *Delay transport of an animal that appears to be exhausted or dehydrated until the animal is rested, fed and rehydrated.*
- *Milk all cows that are still lactating just prior to transporting to a packing plant or a processing facility.*
- *Use a transportation company that is knowledgeable about your animal care expectations and provides for the safety and comfort of the animals during transport.*
- *Do not transport animals to a packing or processing facility until all proper treatment withdrawal times have been followed.*
- *Do not transport animals with a poor body condition, generally a Body Condition Score of less than 2 (1 – 5 scale).*
- *Do not transport heifers or cows where calving is imminent and likely to occur during the transportation or marketing process.*
- *Do not transport animals that require mechanical assistance to rise and walk, except to receive veterinary treatment. When using any handling device, abuse is never tolerated.*
- *Do not transport animals with bone fractures of the limbs or injuries to the spine. Animals with a recent fracture unrelated to mobility should be culled and transported directly to a packing or processing facility.*
- *Do not transport animals with conditions that will not pass pre-slaughter inspection at a packing or processing facility. If unsure, consult with your veterinarian before transporting an animal to a packing or processing facility.”*

The Proposed Rule standard conforms to FARM Program guidelines. NMPF supports the addition as proposed.

**§ 205.242(a)(3-5)** – In addition to the standard outlined in NMPF comments on § 205.242(a)(2)(ii), the FARM Program guidelines for transportation of dairy cattle regardless of destination includes “(1) clean/disinfected truck or trailer when moving young stock or cull cows, (2) sides high enough to prevent animals from jumping over them, (3) nonslip flooring that provides secure footing (avoid abrasive floor and wall surfaces), (4) ventilation and proper bedding to protect animals from weather extremes, and (5) adequate vehicle covering to protect animals from adverse weather.” In addition to these guidelines, the FARM Program utilizes the National Beef Quality Assurance *Master Cattle Transporter Guide*<sup>xiv</sup> as a resource for dairy farmers. The *Master Cattle Transporter Guide* clearly lays out the requirements in much better detail to make sure cattle have the best care and are kept comfortable during transport. NMPF does not support these additions and rather proposes the following:

“(3) Transportation plans must conform to livestock sector-specific transportation guidelines.”

#### **Third-Party Animal Welfare Certifications**

USDA-AMS-NOP states in the Proposed Rule that “we expect that organic producers may opt to no longer participate in these [third-party animal welfare] certification programs once this proposed rule is finalized. AMS believes that these private certification programs have a participant base that is broader than organic producers and offer a unique service for producers who want to convey specific information about animal welfare practices to consumers.” NMPF anticipates that organic dairy farms will continue to participate in the FARM Program. As previously described, the participation in the FARM Program is nearly universal in the U.S. dairy industry and a requirement of many large customers. ***NMPF recommends that the FARM Program be recognized as third-party verification to verify compliance by USDA-AMS-NOP animal welfare standards.***

#### **Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

In the Proposed Rule, USDA-AMS-NOP “expects that the proposed handling requirements for organic livestock, including transit and slaughter, are common

industry practice and would not substantially affect producers or handlers.” After a thorough review of the Proposed Rule, NMPF believes that USDA-AMS-NOP has underestimated the potential cost to organic dairy farmers. ***Several new and changed standards in the Proposed Rule will impose substantial costs to organic dairy farmers which USDA-AMS-NOP has not analyzed in accordance with Executive Orders 12866 and 13563.***

**§ 205.239(a)(4)(i)** in the Proposed Rule will require organic dairy farms to either build additional housing to accommodate their herd or reduce their herd size for the current housing facility. This is true for both tie-stall and free-stall dairy facilities. Stall systems are built at very specific dimensions for cow comfort, to allow cows to be kept as sanitary as possible, and to provide for efficient manure removal. There will need to be substantial redesign in current organic tie-stall and free-stall dairy facilities along with building additional housing to accommodate this standard as written in the Proposed Rule. NMPF estimates that an average organic dairy farm will need to double the size of its cattle housing facility. Building a new dairy cattle facility is estimated to cost \$3,000 per stall<sup>xv</sup>, so a 100-cow organic dairy farm which would require new facilities for 50 cow stalls would cost \$150,000. ***The NMPF proposal to retain the current § 205.239(a)(4)(i) standard will eliminate this unnecessary increased cost to organic dairy farms.***

**§ 205.242(a)(1)** in the Proposed Rule will require organic dairy cull cows to be transported in separate pens on cattle transport trailers. This is a particular burden to small organic dairy farms that ship individual cull cows to market periodically rather than pens or groups at the same time. For example, a 100-cow organic dairy farm may ship 30 cull dairy cows to market in a year, less than one cow per week. A typical cattle transport trailer which would hold five to ten dairy cull cows from several farms in an individual pen, would now only have one organic dairy cull cow reducing capacity. That individual organic dairy farm must now be charged a greater transportation cost to make up for reduced capacity on the cattle transport trailer. If this cost is \$100, that 100-cow dairy farm has increased costs of \$3000 per year. ***The NMPF proposed change to § 205.242(a)(1) will eliminate this unnecessary increased cost to organic dairy farms.***

### **Conclusions**

Through the FARM Program, the U.S. dairy industry has committed to ensuring high standards of animal care and wellbeing. The animal care and wellbeing commitment is the same for organic and conventional dairy farmers. Today, nearly 95 percent of the U.S. milk production is enrolled in the FARM Program with more than 40,000 on-farm evaluations conducted since 2009. NMPF estimates about 95 percent of organic milk production is enrolled in the FARM Program and several thousand on-farm evaluations have been conducted.

NMPF believes that the FARM Program assures animal care and wellbeing in the U.S. dairy industry and the changes proposed by USDA-AMS-NOP in the Proposed Rule are unnecessary and duplicative for dairy cattle. However, should USDA-AMS-NOP proceed with standards, NMPF has also provided specific recommendations for changes, additions, and deletions which will align the Proposed Rule with the U.S. dairy industry standards. NMPF also believes that several provisions in the Proposed Rule which, if not changed to our recommendations, will impose substantial costs to organic dairy farmers which USDA-AMS-NOP has not analyzed in accordance with Executive Orders 12866 and 13563.

NMPF appreciates the opportunity to provide these comments to USDA-AMS-NOP on this important Proposed Rule. The U.S. dairy industry is committed to animal care and wellbeing as the responsibility of every dairy farmer regardless of size, location, production style, or marketing certifications and is an obligation for the entire dairy value chain. If you have any questions or require additional information, please contact me at 703-243-6111 or at [jjonker@nmpf.org](mailto:jjonker@nmpf.org).

Sincerely,



Jamie Jonker, Ph.D.  
Vice President  
Sustainability & Scientific Affairs

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<sup>i</sup> [http://nationaldairyfarm.com/sites/default/files/FARM\\_manual\\_2013\\_WEB.pdf](http://nationaldairyfarm.com/sites/default/files/FARM_manual_2013_WEB.pdf)

<sup>ii</sup> [http://nationaldairyfarm.com/sites/default/files/YearInReview\\_2015\\_FINAL\\_WEB.pdf](http://nationaldairyfarm.com/sites/default/files/YearInReview_2015_FINAL_WEB.pdf)

<sup>iii</sup> <http://nationaldairyfarm.com/participating-co-ops-and-proprietary-processors>

<sup>iv</sup> <http://corporate.walmart.com/2016grr/enhancing-sustainability/promoting-product-transparency-and-quality>

<sup>v</sup> [http://leprinofoods.com/LQAC\\_OUR\\_BELIEFS.pdf](http://leprinofoods.com/LQAC_OUR_BELIEFS.pdf)

<sup>vi</sup> <http://www.chobani.com/animalcare>

<sup>vii</sup> <https://corporate.aldi.us/en/corporate-responsibility/supply-chain/sustainable-resources/animal-welfare/>

<sup>viii</sup> <https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Animal%20Welfare%20and%20Stocking%20Rates.pdf>

<sup>ix</sup> [https://www.ams.usda.gov/sites/default/files/media/Organic%20Foods%20Production%20Act%20of%201990%20\(OFPA\).pdf](https://www.ams.usda.gov/sites/default/files/media/Organic%20Foods%20Production%20Act%20of%201990%20(OFPA).pdf)

<sup>x</sup> National Dairy FARM Program. 2016 (in press). FARM Animal Care Manual. Available online (estimated availability August 15, 2016) at [www.nationaldairyfarm.com](http://www.nationaldairyfarm.com)

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- <sup>xi</sup> Schütz, K.E., Cox, N.R., Matthews, L.R. 2008. How important is shade to dairy cattle? Choice between shade or lying following different levels of lying deprivation. *Appl. Anim. Behav. Sci.* 114:307–318.
- <sup>xii</sup> Tucker, C.B., Rogers, A.R., and Schütz, K.E. 2008. Effect of solar radiation on dairy cattle behaviour, use of shade and body temperature in a pasture-based system. *Appl. Anim. Behav. Sci.* 109:141-154.
- <sup>xiii</sup> <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/ucm2007966.htm>
- <sup>xiv</sup> [http://www.bqa.org/Media/BQA/Docs/master\\_cattle\\_transporter\\_guide-digital.pdf](http://www.bqa.org/Media/BQA/Docs/master_cattle_transporter_guide-digital.pdf)
- <sup>xv</sup> <http://fyi.uwex.edu/dairy/files/2015/11/Building-Cost-Estimates-Dairy-Modernization.pdf>