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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–11–0030; NOP–11–07]

National Organic Program; Notice on the Ruminant Slaughter Stock Provision of the Access to Pasture Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; discussion of comments.

SUMMARY: This document informs the general public that no further action will be taken by the National Organic Program (NOP) to amend the provision on ruminant slaughter stock under the NOP regulations. This document provides a summary of the comments received in response to a request for comments on the ruminant slaughter stock requirements as codified by the final rule on access to pasture published on February 17, 2010. Based upon the comments received, the rationale behind the decision to retain the section on livestock living conditions for ruminant slaughter stock as codified under the NOP regulations is discussed.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, PhD, Director, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave., SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250–0268; telephone: (202) 720–3252; facsimile (202) 205–7808; or *electronic mail*: Melissa.Bailey@usda.gov.

SUPPLEMENTARY INFORMATION: The NOP is authorized by the Organic Foods Production Act (OFPA) of 1990, as amended (7 U.S.C. 6501–6522). The Agricultural Marketing Service (AMS) administers the NOP. Under the NOP,

the AMS oversees national standards for the production, handling, and labeling of organically produced agricultural products. Final regulations implementing the National Organic Program (NOP) were published December 21, 2000 (65 FR 80548), and became effective on October 21, 2002.

On February 17, 2010, the NOP published a final rule on the access to pasture requirements for livestock (75 FR 7154). This rule established certain conditions that operations raising ruminant slaughter stock (also called “finish feeding” operations) must meet under § 205.239(d) of the NOP regulations. During the finishing period, ruminant slaughter stock are exempt from the minimum 30 percent Dry Matter Intake (DMI) requirement from grazing that other ruminants must meet under the livestock feed requirements at § 205.237 of the NOP regulations. However, producers must maintain slaughter stock on pasture for each day that their finishing period overlaps with the grazing season for the operation’s geographical location. Another condition is that the finishing period is limited to one-fifth (1/5) of the animal’s total life or 120 days, whichever is shorter.

Although the access to pasture rule was issued as a final rule, the NOP invited public comments on the ruminant slaughter stock provision at § 205.239(d) of the NOP regulations. As discussed in the preamble of the final rule (75 FR 7176), the NOP determined that it would be prudent to accept comment on this provision because the proposed rule for access to pasture (73 FR 63584) did not include an exception for ruminant slaughter stock from the new livestock feed and living condition requirements and, thus, could benefit from additional public comment. In the final rule, the NOP requested comments on three issues related to the ruminant slaughter stock provision: (1) Infrastructural hurdles and regional differences that should be considered, (2) the length of the finishing period, and (3) the use of feedlots for finishing organic slaughter stock. The 60-day comment period closed on April 19, 2010.

The NOP received over 500 individual and 14,000 form letter public comments in response to the request for comments on ruminant slaughter stock. The NOP opted to supplement the

analysis of the comments received with two site visits of organic finish feeding operations in December 2010. The comments received addressed all three issues for which we had requested feedback as well as some additional issues (e.g. labeling) for which we had not specifically solicited comments. We received comments from organic beef producers, state government agencies, animal welfare organizations, consumer organizations, certifying agents, retailers, and a trade association.

Based upon the comments received, the NOP does not believe that action is warranted to amend the provision on ruminant slaughter stock at § 205.239(d) of the NOP regulations. We are issuing this document to inform certified operations, certifying agents, and the general public that further rulemaking will not be pursued by the NOP at this time. Furthermore, we are issuing this document to provide a discussion of the comments received and the rationale behind our decision to retain § 205.239(d) as codified by the access to pasture final rule published on February 17, 2010. The NOP would like to reiterate that operations certified as of February 17, 2010 (the publication date of the rule) need to be in full compliance with the rule, including the provision on ruminant slaughter stock at § 205.239(d) of the NOP regulations, by June 17, 2011. New organic livestock operations must be in full compliance with the rule now.

Discussion of Comments Received on Infrastructural Challenges

One infrastructural consideration cited in many comments submitted by organic beef producers was their concern over the feasibility of maintaining slaughter stock on pasture without degradation to the environment. Their environmental concerns fell into two areas: (1) The potential disruption to proper nutrient cycling, and (2) soil and water contamination. With regard to nutrient cycling, many comments suggested that if slaughter stock is allowed access to pasture, then their operations would be unable to collect the manure for application to crops, thus, adversely impacting the nutrient cycling on their farms. These commenters asserted that valuable nutrients would be left on pasture, instead of captured and used on cropland, and that this would require

them to purchase off-farm organic fertilizers for their crops. One commenter further explained that their operation had worked with the Natural Resource Conservation Service (NRCS) to invest in a settling basin for the collection of runoff from the finish feeding yard such that it could be used to fertilize their organic crops. They suggested that requiring them to maintain slaughter stock on pasture would eliminate the benefit of that investment.

In consideration of these comments on nutrient cycling, we ascertained how the requirement to maintain slaughter stock on pasture would impact the ability of beef producers to promote nutrient cycling on their farms. We believe that maintaining slaughter stock on pasture will not necessarily be an impediment to proper nutrient cycling. For the period of time that the finishing period corresponds with the grazing season and, thus, when slaughter stock will need to be maintained on pasture, nutrients from manure would be fertilizing the pasture areas instead of captured for use on cropland. While some producers might prefer to capture and use these nutrients on cropland as an alternative to purchasing organic fertilizers, the application of manure nutrients on pasture does not equate to environmental degradation as long as the pasture is appropriately managed as part of an operation's organic system.

We also believe that the provision does not preclude the collection of manure during the non-grazing season and that most producers who have infrastructure to capture runoff will continue to benefit from this infrastructure. With the new provisions at § 205.239(d), the period of time during which producers would collect manure from their feeding area would only decrease by the number of days that the finishing period corresponds to the grazing season (*i.e.* the days when the animals must be maintained on pasture). During the non-grazing season, producers will still be able to collect the majority of the manure from feed areas as they collect now and can continue to apply the manure they collect to their cropland.

With regard to soil and water contamination, some commenters expressed concern over the compaction and runoff issues that could arise by allowing slaughter stock access to pasture areas near their feed yards, especially after inclement weather, or because of the long distances animals would need to travel to reach pasture areas. These comments cited concern over erosion of animal lanes or walkways and suggested that allowing

the use of lanes or walkways might conflict with the USDA Natural Resource Conservation Service (NRCS) plans for nutrient and soil management of paddocks. We acknowledge that there can be farm specific conditions (e.g. areas that receive heavy rainfall) under which providing access to pasture areas would present a risk to soil and water quality. However, producers already have the option of including a description in their Organic System Plan (OSP) of conditions under which they anticipate confining livestock in a yard or feeding pad due to a risk to soil and water quality per § 205.239(b)(4) of the NOP regulations. Therefore, we do not agree that a change is warranted to remove the "maintain on pasture" language in the slaughter stock provision at § 205.239(d) since producers already have a mechanism through the NOP to address instances during which soil or water quality may be put at risk by allowing animals on pasture. In addition, if producers need to use lanes or walkways because of their farm layout, then these should be managed accordingly to prevent erosion. We encourage producers to engage NRCS in discussion about how their management approach might need modification so they can maintain slaughter stock on pasture during the period required by the NOP regulations.

Another infrastructural issue raised by producers is that existing feeding yards and areas have not been constructed near pasture areas, making it difficult and cost prohibitive to provide a pasture area to slaughter stock. A few commenters also suggested that putting feed bunks or feeding grains in the pasture would be expensive and could damage pasture by encouraging overuse of the areas that had feed bunks. Additional comments propose that this would also present a challenge with fencing to keep the slaughter stock separate from other groups on pasture (*e.g.*, a bull with cows); one commenter pointed out this would be especially difficult if multiple age groups needed to be managed separately.

As a point of clarification, the provision does not require producers to provide feed rations to slaughter stock on the pasture. The provision at § 205.239(d) states that "yards, feeding pads, or feedlots *may* (emphasis added) be used to provide finish feeding rations" during the period when slaughter stock must be maintained on pasture. For example, a producer with a yard or feeding pad located near a pasture area might choose to install a lane from the yard to the pasture so animals can use the pasture during the day while retaining access to their feed

ration provided at the yard or feeding pad. For those with different configurations, we recognize that they will need to make adjustments to make the infrastructure compatible with the requirement to maintain animals on pasture for certain periods. However, we believe that the requirement to maintain slaughter stock on pasture for these periods is consistent with what has always been a requirement of the NOP regulations: Providing ruminants with access to pasture. We received some comments that, in the absence of regulatory action by the NOP, producers have guided their management practices using the 2001 and 2005 National Organic Standards Board (NOSB) recommendations which do not specify a requirement to maintain slaughter stock on pasture during the finishing period. It is critical to remember that NOSB recommendations are not codified and, therefore, are not legally binding. Prior to the access to pasture final rule, the NOP regulations did not have an allowance for the finishing of slaughter stock and, therefore, not providing access to pasture during the finishing period was a violation of the NOP regulations.

Discussion of Comments Received on the Length of the Finishing Period

The majority of comments received voiced support for a finishing period during which slaughter stock would have access to pasture. Several comments received from producers suggested changing the length of the finishing period from a 120-day, or one-fifth of life, (whichever is shorter) maximum, to either a 140-day or 160-day maximum. Their rationale was that the additional time on feed would enable them to obtain choice grade beef. One commenter further explained that the 120-day maximum may not be adequate if the nutritional quality of grain were to decrease in a particular year because of crop conditions. Commenters expressed that this issue of grading choice could be further exacerbated by the fact that slaughter stock must be maintained on pasture during the finishing period. Since slaughter stock on pasture will graze during the finishing period and, thus, may consume less grain, commenters explained that there may be a lower rate of gain and lower carcass grade attained in the final product. There was also uncertainty among commenters about whether the "one-fifth of life" condition in the rule would be sufficient for optimizing carcass quality for bovines that reach slaughter weight earlier than 20 months of age. However, some producers agreed that, on average, a

120-day finishing period for bovines tends to be adequate and supported the rule as written. This position is further supported by both the comments received on the proposed rule for access to pasture and the NOSB recommendations from 2001 and 2005, which included a 120-day maximum finishing period as part of their recommendations.

We believe that the record supports retaining the 120-day/one-fifth of life finishing period language as currently written at § 205.239(d). Many beef producers stated that they were currently complying with the 2001 NOSB recommendation and emphasized their support for this recommendation. The 2001 NOSB recommendation, which was supported by these comments, references a 120-day finishing period. Furthermore, the 2005 NOSB recommendation states that the Board received comments from beef producers who indicated that 120-days is the amount of time needed to achieve “choice” grades of beef. In addition, as discussed in the access to pasture final rule (75 FR 7176), the 120-day period was also based upon the typical time frame for finishing beef cattle at 18–24 months of age. The one-fifth of life language was added to account for livestock who are slaughtered at a much younger age than is typical for beef animals. We believe it is important to retain the one-fifth of life as part of the provision, because, in its absence, there could be cases in which young animals would be denied access to pasture for the majority of their lives. This would not meet the intent of the access to pasture requirements for all ruminants.

Among the animal welfare and environmental organizations who commented, several opposed any finishing period during which livestock are exempt from the 30% DMI from pasture. The comments particularly target the practice of grain finishing that is facilitated by the finish feeding exemption. Some of these comments requested a shorter finishing period if the 30% DMI from pasture exemption is retained. Other comments voiced conditional support for the 120-day finishing period dependent upon the retention and clarification of the requirement to maintain livestock on pasture during the finishing phase. Some comments received from animal welfare organizations suggested that the finishing period is too long, but did not explicitly state their reasoning for suggesting a shorter finishing period. A few comments, both stating their overall support for the ruminant slaughter stock provision, recommended that certifying agents be allowed to determine the

length of the finishing period that is appropriate for regional conditions and species-specific differences.

We believe that the new requirement at § 205.239(d) as codified addresses many of these concerns while providing sufficient flexibility to organic livestock producers. It allows producers who feed grain to achieve a certain type of organic product to continue to do so while ensuring that ruminants are maintained on pasture for a period of time that meets the intent of the access to pasture rule, which is, in part, to accommodate the natural grazing behavior of ruminants. However, it would not be reasonable to require that 30% of the animal's DMI come from grazing during the finishing period because of the amount of grain and free choice hay that is typically consumed by slaughter stock, even when these animals are maintained on pasture. We also believe that setting a specific standard of 120 days or one-fifth of life, rather than allowing certifying agents to determine the finishing period, will ensure consistency across certifiers and a level playing field for all producers.

Discussion of Comments Received on the Use of Feedlots

Many comments opposed the exemption of slaughter stock from the 30% DMI requirement during the finishing period and the allowance for providing feed rations in yards, feeding pads, or feedlots. One producer disagreed with allowing slaughter stock to be confined for any period of time and would prefer a provision that requires animals to be maintained on pasture their entire lives, not just the period of time when finishing overlaps with the grazing season. Comments received from animal welfare advocacy groups also emphasized that exempting slaughter stock from being on pasture at all times is unnecessary because they believe that the majority of organic producers do not confine their beef to feedlots at any time. These comments further asserted that allowing the finishing of animals in feed yards is contrary to the requirement under the NOP regulations to accommodate the natural behaviors of the animals. A few comments detailed some of the animal health and welfare drawbacks to grain feeding ruminants in feeding areas and advocated for a complete ban on providing finish rations in feed yards, feeding pads or feedlots. One comment suggested that the entire exemption for ruminant slaughter stock be deleted, arguing that finish feeding operations should have to meet consumer expectations by following all of the

access to pasture requirements of the NOP regulations.

While we recognize the concerns raised by commenters about confinement and animal health and welfare issues associated with feedlots, yards, and feeding areas, we believe that these concerns are already addressed throughout the NOP regulations and do not require an amendment to the finish feeding provisions. For example, under § 205.239(a) of the NOP regulations, producers are already required to maintain year-round livestock living conditions which accommodate the health and natural behavior of animals, except when temporary confinement is deemed necessary according to § 205.239(b) and (c). The health and welfare of slaughter stock is also addressed by ensuring that yards, feeding pads, and feedlots are large enough to allow all ruminants occupying the area to feed simultaneously without crowding and without competition for food (§ 205.239(d)). Total confinement of ruminants in yards, feeding pads, and feedlots is prohibited per § 205.239(a)(1). Furthermore, producers are already required to manage their livestock feed to ensure the health of their animals in accordance with § 205.237 and § 205.238(a)(2). We also believe that the requirement at § 205.239(d) to maintain slaughter stock on pasture when the finishing period overlaps with the grazing season ensures that animals will have an opportunity to graze when forage is available.

Discussion of Comments Received on Labeling and Grass-Fed Products

Many commenters suggested that there is a place for both grass finished and grain finished beef in the organic market. One commenter put forth a proposal for a 3-tier labeling system: “Organic—Grass Fed/Grain Finished,” “Organic—Grass Fed/Finished on Pasture with Supplemental Grain Feeding,” “Organic—100% Grass Fed/Grass Finished.” Their recommendation suggested that the “Organic—100% Grass-fed/Grass Finished” label be a hybrid of the organic standards and the Agricultural Marketing Service (AMS) Quality Systems Verification Program standards for “USDA grass-fed.” The comments supporting this approach suggested that this labeling scheme would accommodate the diversity of current practices in organic meat production and the diversity in consumer preference by enabling consumers to differentiate among the types of finishing practices.

Some commenters did not recommend that NOP adopt a new labeling scheme, but instead advised that the organic regulations require grass-fed claims on organic meat products to adhere to the AMS grass-fed standard. Furthermore, these commenters requested that the NOP facilitate a means to obtain organic certification and grass-fed verification simultaneously via the certifying agent of the certified operation. Other commenters advised that grass-fed label claims are not and should not be within the purview of NOP. Each producer, they stated, can elect to pursue claims, such as grass-fed, in addition to and separate from organic certification.

We do not believe it is practical for the NOP to undertake the labeling scheme recommended by some commenters. The existing NOP regulations do not preclude producers from consulting with the USDA Food Safety and Inspection Service (FSIS) about the possibility of modeling their labels upon the scheme described by the commenters. It is important to note that organic producers may request verification for a "Grass Fed" label claim through the AMS grass-fed process verified standard at any time. In addition, the NOP identified what would be required for certifying agents who certify organic to offer "Grass Fed" verification under their accreditation scope. The certifying agent would need to be approved under the ISO Guide 65 program for organics, request an expansion of their accreditation to include "Grass Fed" through AMS Audit, Review, and Compliance (ARC) Services, and engage in a review of the process at their next onsite audit with ARC. We encourage certifiers to contact the NOP for additional information if they are interested in pursuing this option.

Dated: April 28, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[Document No. DA-11-03: AMS-DA-08-0050]

Dairy Promotion and Research Program; Importer Nominations to the Dairy Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Rule.

SUMMARY: This action is pursuant to the Dairy Production Stabilization Act of 1983 (Dairy Act), as amended, and the Dairy Promotion and Research Order (Dairy Order), as amended, which require the Secretary of Agriculture to add importer representation, initially two members, to the National Dairy Promotion and Research Board (Dairy Board). USDA is seeking nominations of importers to be considered for appointment to the Dairy Board.

DATES: Nominations must be received on or before June 9, 2011.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, USDA, AMS, Dairy Programs, Promotion and Research Branch, Stop 0233-Room 2958-S, 1400 Independence Avenue, SW., Washington, DC 20250-0233, (202) 720-6909, Whitney.Rick@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This document is being issued pursuant to the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501-4514), Public Law 98-180, enacted November 29, 1983, as amended May 13, 2002, by Public Law 107-171 and further amended June 18, 2008, by Public Law 110-246, and the Dairy Order, as amended under the Final Rule [76 FR 14777; published in the **Federal Register** on March 18, 2011].

The Dairy Board was established under the Dairy Production Stabilization Act of 1983 (Dairy Act) to develop and administer a coordinated program of promotion, research, and nutrition education. Importer representation on the Dairy Board was mandated by the 2002 amendments to the Dairy Act. The Dairy Board is authorized to design programs to strengthen the dairy industry's position in domestic and foreign markets. The program is financed by a mandatory 15-cent per hundredweight assessment on all milk produced in the United States and marketed commercially and a 7.5-cent per hundredweight assessment on milk, or equivalent thereof, used to produce dairy products imported into

the United States. Assessments on dairy products imported into the United States are effective beginning on August 1, 2011, as published in the March 18, 2011, Final Rule.

The Dairy Order states that, initially, importers will be represented on the Dairy Board by two importer members appointed by the Secretary. Thereafter, importer representation on the Dairy Board will be reviewed at least once every three years, and adjusted to reflect the volume of imports relative to domestic production of milk.

For the initial importer nominations, the Secretary will appoint two individuals from those nominated to serve as importer members on the Board. The length of a member's term will be three years. In order to properly coordinate the terms of importers with those of dairy farmer members and to stagger the two terms, initially one importer member will serve a two-year term ending October 31, 2013, and one importer member will serve a term ending October 31, 2014.

Importer nominees must be importers of dairy products and will be subject to the assessment to fund the National Dairy Promotion and Research Program. Such nominations may be submitted by individual importers of dairy products or by organizations representing dairy importers, as approved by the Secretary. Individual importers submitting nominations to represent importers on the Dairy Board must establish, to the satisfaction of the Secretary that the person submitting the nomination is an importer of dairy products. Importer organizations must adequately represent importers of dairy products under the primary determining considerations of whether its membership consist primarily of importers of dairy products and whether a substantial interest of the organization is in the importation of dairy products. An importer means a person that imports dairy products into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles dairy products outside of the United States for sale in the United States, and who is listed as the importer of record for such dairy products.

For nominating forms and information, interested parties should contact Whitney Rick, USDA, AMS, Dairy Programs, Promotion and Research Branch, Stop 0233-Room 2958-S, 1400 Independence Avenue, SW., Washington, DC 20250-0233, (202) 720-6909, Whitney.Rick@ams.usda.gov. The forms also can be accessed online at <http://www.ams.usda.gov/dairyimportassessment>.