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B-319346

March 8, 2010

The Honorable Blanche Lincoln  
Chairman  
The Honorable Saxby Chambliss  
Ranking Minority Member  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate

The Honorable Collin C. Peterson  
Chairman  
The Honorable Frank D. Lucas  
Ranking Minority Member  
Committee on Agriculture  
House of Representatives

Subject: *Department of Agriculture, Agricultural Marketing Service: National Organic Program; Access to Pasture (Livestock)*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Agriculture, Agricultural Marketing Service (AMS), entitled “National Organic Program (NOP); Access to Pasture (Livestock)” (RIN: 0581-AC57). We received the rule on February 19, 2010. It was published in the *Federal Register* as a final rule with request for comments on February 17, 2010, with an effective date of June 17, 2010. 75 Fed. Reg. 7154.

The final rule amends livestock and related provisions of the NOP regulations. Under the NOP, AMS oversees national standards for the production and handling of organically produced agricultural products. AMS has taken this action to ensure that NOP livestock production regulations have sufficient specificity and clarity to enable AMS and accredited certifying agents to efficiently administer the NOP and to facilitate and improve compliance and enforcement.

The final rule is also intended to satisfy consumer expectations that ruminant livestock animals graze on pastures during the grazing season. Additionally, the final rule provides clarification and specificity to the livestock feed and living conditions provisions and establishes a pasture practice standard for ruminant animals. AMS states that the final rule requires that producers maintain ruminant slaughter stock on pasture for each day that the finishing period corresponds with the grazing

season for the geographical location. However, the final rule exempts ruminant slaughter stock from the 30 percent dry matter intake (DMI) from grazing requirement during the finishing period.

The final rule has an effective date of June 17, 2010. The final rule will be fully implemented June 17, 2011. Operations which obtain organic certification by June 17, 2010, must comply with the final rule. Operations which are certified as of the publication date must fully implement the provisions of the final rule, as applicable, June 17, 2011. Although AMS is issuing this as a final rule, it is requesting public comments on the exceptions for finish feeding of ruminant slaughter (§ 205.239(d)). To ensure consideration, comments must be received by April 19, 2010.

Enclosed is our assessment of AMS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that AMS complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Rayne Pegg  
Administrator, Agricultural  
Marketing Service  
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF AGRICULTURE,  
AGRICULTURAL MARKETING SERVICE  
ENTITLED  
"NATIONAL ORGANIC PROGRAM;  
ACCESS TO PASTURE (LIVESTOCK)"  
(RIN: 0581-AC57)

(i) Cost-benefit analysis

AMS considered the cost and benefits of the rule. AMS notes that the benefits include uniformity in application to the livestock regulations especially as they relate to the pasturing of ruminants, which will create equitable, consistent performance standards for all ruminant livestock producers and allow the accredited certifying agents (ACAs) and AMS to administer the livestock regulations in a way that reflects consumer preferences regarding the production of organic livestock and their products. AMS states that an additional benefit of uniform application of the NOP livestock regulations should result in a near elimination of violations of the pasture regulations. AMS believes this will eliminate the filing of complaints regarding the pasturing of ruminants.

AMS states that the costs include an increase in the cost of production for producers who currently do not pasture their ruminant animals and those producers who do not manage their pastures at a sufficient level to provide at least 30 percent DMI. AMS notes the costs associated with complying with this rule would vary based on the livestock producer's current practices and the degree to which they conform to the amended livestock regulations. Additionally, AMS believes ruminant livestock operations currently pasturing their animals may see minimal increased costs, if any. According to AMS, the potential costs include land and seed for pasture and costs associated with providing sufficient vegetation for grazing throughout the grazing season, which would include the time (labor) spent seeding the pastures, fuel for equipment used in seeding, and the cost of seed. AMS believes costs of pasture vary depending on location, with costs likely being higher for certified organic pasture. AMS also believes seed costs will vary depending on what is to be grown and how many acres are to be grown. AMS states such costs may be offset by the benefits of using improved pasture, which include a lower cost of purchased feed (grains and forages) per hundredweight of milk or meat produced, reduced forage harvest costs, and reduced veterinary costs. Also, AMS notes that at the retail level, there may be increased consumer prices. AMS believes for organic slaughter stock producers, an increase in costs might result in a greater volume of slaughter animals, at least in the short term, entering the market driving down prices. Additionally, AMS states that longer term these increased costs could result in increased consumer prices unless

the increased costs are offset by reductions in other costs of production. AMS states other costs of production that could be expected to go down are costs associated with producer harvest and purchase of feed and the cost of herd health. AMS also notes that dairy producers not currently pasturing their animals and those not managing their pastures at a level sufficient to provide at least 30 percent DMI are also expected to experience increased costs, which could, at least in the short term, lead to a reduced organic milk supply.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

AMS has considered the economic impact of this action on small entities, which includes producers and agricultural service firms, such as handlers and ACAs. AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

In its submission to the Comptroller General, AMS did not include an analysis of the final regulations under this Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final regulations were issued using the notice and comment procedures found at 5 U.S.C. § 553. On April 13, 2006, NOP published an Advanced Notice of Proposed Rulemaking (ANPR) on NOP—Access to Pasture (Livestock). 71 Fed. Reg. 19,131. AMS received over 80,500 comments in response to this ANPR. 75 Fed. Reg. 7155.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The current information collection requirements associated with the NOP have been previously approved by Office of Management and Budget (OMB) and assigned OMB control number 0581–0191. A new information collection package is being submitted to OMB for approval of 9,200 hours in total burden hours to cover this new collection and recordkeeping burden of paragraph § 205.237(d) of this final rule. Upon OMB’s approval of this new information collection, AMS will merge this collection into currently approved OMB Control Number 0581–0191. The total burden hours to cover this new collection and recordkeeping burden of § 205.237(d) is 9,200 hours.

Statutory authorization for the rule

AMS states the final rule is authorized by the Organic Foods Production Act of 1990, as amended. 7 U.S.C. 6501–6522.

Executive Order No. 12,866 (Regulatory Planning and Review)

AMS determined that the final rule is significant for purposes of Executive Order 12,866, and, therefore, has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

In its submission to the Comptroller General, AMS did not include an analysis of the final regulations under this Order.