



CORNUCOPIA
I N S T I T U T E

May 2, 2017

NOP Compliance and Enforcement Branch
Attn: Betsy Rakola
United States Department of Agriculture
1400 Independence Avenue, S.W.
Mail Stop 0268, Room 2648-S
Washington, D.C. 20250-0268

RE: Complaint concerning possible violation of the National Organic Program's regulatory standards by the Colorado State Department of Agriculture

Dear Ms. Rakola:

The Cornucopia Institute's review of NOP procedures has determined that complaints brought against accredited certifiers require a mandatory investigation by the NOP.

Accordingly, we respectfully request that the USDA's National Organic Program formally investigate the Colorado State Department of Agriculture based on our allegation that Aurora's High Plains dairy in Colorado is not complying with the organic standards. The Cornucopia Institute has also filed a complaint alleging violations of organic law and regulations at Aurora's High Plains dairy, certified by the Colorado State Department of Agriculture.

We are basing this complaint on new information contained in the May 2, 2017 article in *The Washington Post*, (*Why Your 'Organic' Milk May Not Be Organic*).

The photographic evidence, including a video, accompanying the story reinforces concerns we have expressed in past complaints concerning huge livestock dairies, including ones operated by Aurora. The dairy herd animals are not being pastured, as required by law, rather they are largely confined to feedlots that facilitate the management's preference for ease and frequency of milking.

At the end of this complaint, you will find the specific regulatory standards that are of concern in this case.

As you know, there are provisions for the "temporary" confinement of cattle, primarily due to health or environmental factors. However, confining cattle in order to increase milk production, or because the size of the herd requires walking too far to access fresh pasture in a timely manner, or because of the need to produce stored feed, are not be among the enumerated legal exemptions from requiring "access to the outdoors/access to pasture."

Furthermore, keeping the majority of cattle confined in feedlots, for the majority of their lives, does not meet the requirement in the standards to accommodate the health and natural instinctive behaviors of the animals.

The Washington Post article quotes Aurora officials as saying they have provided the minimum 120 days of pasture access for their herd. However, that is not what the regulations state. The regulations clearly reference that pasturing is expected for the length of the entire "grazing season." In the case of this facility, that season extends well beyond 120 days.

Of particular concern for this complaint is the question of the legality of the facility's certifier choosing to send its inspector to the Aurora High Plains facility in November, after the end of the growing and grazing seasons, as reported in *The Washington Post* article. An inspector should look closely at management practices during the time of year when the full range of those activities/practices are most in force. This was certainly not true in late November.

Aurora has been the subject of enforcement actions in the past for pasture deficiencies and what USDA investigators determined were "willful" violations of organic law. It is also worth noting that their certifier, the Colorado State Department of Agriculture, was similarly involved with these exact past breakdowns of organic regulatory requirements by Aurora. In fact, the Colorado State Department of Agriculture was recommended for loss of its accreditation, regarding livestock facilities, by USDA enforcement staff at that time.

We are uncertain whether it is incompetence, negligence or collusion that is contributing to the new and continued alleged failings on the part of this certifier. We respectfully request that NOP investigators thoroughly review all records and interview relevant personnel based on this and prior complaints to make its determination.

The Cornucopia Institute also requests that the NOP's Compliance and Enforcement Branch make a timely, full, and good faith effort in their investigation of these allegations. Failure to take such action will only encourage future scofflaws and corner cutting by organic operators, and will make a mockery of the federal organic regulations that are so diligently observed by the vast majority of participants in the nation's organic agriculture and food sector.

It should be noted that nothing in this formal complaint shall be interpreted as a waiver of our right to appeal under the Adverse Action Appeals Process.

You may contact us at your convenience.

Sincerely,



Will Fantle, Codirector
715-839-7731

§205.238 Livestock health care practice standard.

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

(4) Provision of conditions which allow for exercise, freedom of movement, and reduction of stress appropriate to the species;

§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 [emphasis added]:

(1) Year-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight, suitable to the species, its stage of life, the climate, and the environment: Except, that, animals may be temporarily denied access to the outdoors in accordance with §§205.239(b) and (c). Yards, feeding pads, and feedlots may be used to provide ruminants with access to the outdoors during the non-grazing season and supplemental feeding during the grazing season. Yards, feeding pads, and feedlots shall be large enough to allow all ruminant livestock occupying the yard, feeding pad, or feedlot to feed simultaneously without crowding and without competition for food. Continuous total confinement of any animal indoors is prohibited. Continuous total confinement of ruminants in yards, feeding pads, and feedlots is prohibited.

(2) For all ruminants, management on pasture and **daily grazing throughout the grazing season(s)** to meet the requirements of §205.237, except as provided for in paragraphs (b), (c), and (d) of this section [emphasis added].

(b) The producer of an organic livestock operation may provide temporary confinement or shelter for an animal because of:

(1) Inclement weather;

(2) The animal's stage of life: Except, that lactation is not a stage of life that would exempt ruminants from any of the mandates set forth in this regulation;

(3) Conditions under which the health, safety, or well-being of the animal could be jeopardized;

(4) Risk to soil or water quality;

(5) Preventive healthcare procedures or for the treatment of illness or injury (neither the various life stages nor lactation is an illness or injury);

(6) Sorting or shipping animals and livestock sales: *Provided*, that, the animals shall be maintained under continuous organic management, including organic feed, throughout the extent of their allowed confinement;

(7) Breeding: Except, that, bred animals shall not be denied access to the outdoors and, once bred, ruminants shall not be denied access to pasture during the grazing season; or

(8) 4-H, Future Farmers of America and other youth projects, 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.

- (c) The producer of an organic livestock operation may, in addition to the times permitted under §205.239(b), temporarily deny a ruminant animal pasture or outdoor access under the following conditions:
- (1) One week at the end of a lactation for dry off (for denial of access to pasture only), three weeks prior to parturition (birthing), parturition, and up to one week after parturition;
 - (2) In the case of newborn dairy cattle for up to six months, after which they must be on pasture during the grazing season and may no longer be individually housed: *Provided*, That, an animal shall not be confined or tethered in a way that prevents the animal from lying down, standing up, fully extending its limbs, and moving about freely;
 - (4) 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 of at least 30 percent DMI from grazing throughout the grazing season. Milking frequencies or duration practices cannot be used to deny dairy animals pasture.
- (d) Ruminant slaughter stock, typically grain finished, shall be maintained on pasture for each day that the finishing period corresponds with the grazing season for the geographical location: Except, that, yards, feeding pads, or feedlots may be used to provide finish feeding rations. During the finishing period, ruminant slaughter stock shall be exempt from the minimum 30 percent DMI requirement from grazing. Yards, feeding pads, or feedlots used to provide finish feeding rations shall be large enough to allow all ruminant slaughter stock occupying the yard, feeding pad, or feed lot to feed simultaneously without crowding and without competition for food. The finishing period shall not exceed one-fifth ($\frac{1}{5}$) of the animal's total life or 120 days, whichever is shorter.

§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.

- (a) Pasture must be managed as a crop in full compliance with §§205.202, 205.203(d) and (e), 205.204, and 205.206(b) through (f). Land used for the production of annual crops for ruminant grazing must be managed in full compliance with §§205.202 through 205.206. Irrigation shall be used, as needed, to promote pasture growth when the operation has irrigation available for use on pasture.
- (b) Producers must provide pasture in compliance with §205.239(a)(2) and manage pasture to comply with the requirements of: §205.237(c)(2), to annually provide a **minimum of 30 percent of a ruminant's dry matter intake (DMI), on average, over the course of the grazing season(s)** [emphasis added]; §205.238(a)(3), to minimize the occurrence and spread of diseases and parasites; and §205.239(e) to refrain from putting soil or water quality at risk.
- (c) A pasture plan must be included in the producer's organic system plan, and be updated annually in accordance with §205.406(a). The producer may resubmit the previous year's pasture plan when no change has occurred in the plan. The pasture plan may consist of a pasture/rangeland plan developed in cooperation with a Federal, State, or local conservation office: *Provided*, that, the submitted plan addresses all of the requirements of §205.240(c)(1) through (8). When a change to an approved pasture plan is contemplated, which may affect the operation's compliance with the Act or the regulations in this part, the

producer shall seek the certifying agent's agreement on the change prior to implementation. The pasture plan shall include a description of the:

- (1) Types of pasture provided to ensure that the feed requirements of §205.237 are being met.
- (2) Cultural and management practices to be used to ensure pasture of a sufficient quality and quantity is available to graze throughout the grazing season and to provide all ruminants under the organic system plan, except exempted classes identified in §205.239(c)(1) through (3), **with an average of not less than 30 percent of their dry matter intake from grazing throughout the grazing season** [emphasis added].
- (3) Grazing season for the livestock operation's regional location.
- (4) Location and size of pastures, including maps giving each pasture its own identification.
- (5) The types of grazing methods to be used in the pasture system.
- (6) Location and types of fences, except for temporary fences, and the location and source of shade and the location and source of water.
- (7) Soil fertility and seeding systems.
- (8) Erosion control and protection of natural wetlands and riparian areas practices.