

**2008 SUPPORTING STATEMENT
FOR
NATIONAL ORGANIC PROGRAM-ACCESS TO PASTURE
REPORTING AND RECORDKEEPING REQUIREMENTS
(Proposed Rule)**

OMB NO. 0581-NEW

NOTE TO CLEARANCE:

Upon OMB's approval of this new information collection for NOP Reporting and Recordkeeping Requirements, we will request to merge this collection into currently approved OMB Control Number 0581-0191 National Organic Program Reporting and Recordkeeping Requirements.

A. Justification

- 1. EXPLAIN THE CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY. IDENTIFY ANY LEGAL OR ADMINISTRATIVE REQUIREMENTS THAT NECESSITATE THE COLLECTION.**

The National Organic Program (NOP) is authorized by the Organic Foods Production Act of 1990 (OFPA), as amended, (7 U.S.C. § 6501 *et. seq.*). The Agricultural Marketing Service (AMS) administers the NOP. Under the NOP, AMS oversees national standards for the production and handling of organically produced agricultural products. This action is being taken by AMS to ensure that NOP livestock production regulations are sufficiently detailed to assure compliance, stimulate growth of the organic sector, satisfy consumer expectations, and allow organic producers and handlers flexibility in making site-specific, real-time management decisions.

The Agency has prepared a proposed rule that would amend livestock and related

provisions of the NOP. Consumers, producers, certifying agents, trade associations, retailers, organic associations, animal welfare organizations, consumer groups, and various industry groups are seeking greater detail on the role of pasture in organic livestock production. Also since implementation of the NOP in 2002, the National Organic Standards Board (NOSB) has made several recommendations regarding the role of pasture. As a result of comments, complaints, and noncompliances, AMS is proposing amendments to the livestock provisions of the NOP. The proposed rule provides greater detail for selected provisions of the existing livestock regulations, especially as they relate to pasture and ruminant animals. By specifying in greater detail that producers are to provide ruminants with pasture, recognize pasture as a crop, and incorporate pasture into their organic system plan, producers will have better records and tools for managing pasture and demonstrating compliance with the livestock regulations. Certifying agents will have better tools for measuring compliance with the livestock regulations. Consumers will have better assurances that the organic label is applied in ways that meet their expectations of livestock being raised on pasture in order to produce organic dairy and other livestock products. This proposed rule would also clarify the replacement animal conversion under what is commonly referred to as the “80/20 rule.”

2. INDICATE HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED. EXCEPT FOR A NEW COLLECTION, INDICATE THE ACTUAL USE THE AGENCY HAS MADE OF THE INFORMATION RECEIVED FROM THE CURRENT COLLECTION.

This new collection will provide that during the growing season, producers shall provide not more than an average of 70 percent of a ruminant’s dry matter demand from

dry matter fed (dry matter fed does not include dry matter grazed from vegetation rooted in pasture). The paragraph further provides that producers shall, once a month, on a monthly basis: (1) Document each feed ration (in other words, for each type of animal (beef cattle, dairy cattle, sheep, goat), each class of animal's intended daily diet showing all ingredients, daily pounds of each ingredient per animal, each ingredient's percentage of the total ration, the dry matter percentage for each ingredient, and the dry matter pounds for each ingredient); (2) Document the daily dry matter demand of each class of animal using the formula: $\text{Average Weight/Animal (lbs)} \times .03 = \text{lbs DM/Head/Day} \times \text{Number of Animals} = \text{Total DM Demand in lbs/Day}$; (3) Document how much dry matter is fed daily to each class of animal; and (4) Document the percentage of dry matter fed daily to each class of animal using the formula: $(\text{DM Fed} \div \text{DM Demand in lbs/day}) \times 100 = \% \text{ DM Fed}$. Plans for complying with new paragraph 205.237(c) must be a part of the producer's annual Organic Systems Plan (OSP).

AMS believes that all organic ruminant producers currently determine the daily DMI need of their animals and establish feed rations (which identify the percentage of dry matter for each ingredient) as a part of their good business and livestock management practices. Moreover, most of these organic ruminant producers already document and maintain feed ration records. To minimize disruption to the normal business practices of the affected producers, producers will be permitted to develop their own format for documenting the requirements.

The PRA also requires AMS to measure the recordkeeping burden. Under the NOP (§ 205.103) each producer is required to maintain and make available upon request,

for 5 years, such records as are necessary to verify compliance with the NOP. Under this proposed rule, monthly documentation of: (1) feed rations; (2) the daily dry matter demand of each animal; (3) how much dry matter is fed daily to each animal; and (4) the percentage of dry matter fed daily would become a part of that recordkeeping system. These records will provide the best evidence of compliance with the requirement that for the growing season, producers of organic ruminants provide not more than an average of 70 percent of a ruminant's dry matter demand from dry matter fed. The recordkeeping burden includes the amount of time needed to store and maintain records. AMS estimates that, since most organic ruminant producers already document and maintain feed ration records additional annual costs will be nominal.

This information collection is only used by the organic ruminant producer; authorized representatives of USDA, including AMS, NOP staff; and USDA accredited certifying agents. Organic ruminant producers and USDA accredited certifying agents are the primary users of the information and AMS is the secondary user.

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3. **DESCRIBE WHETHER, AND TO WHAT EXTENT, THE COLLECTION OF INFORMATION INVOLVES THE USE OF AUTOMATED, ELECTRONIC, MECHANICAL, OR OTHER TECHNOLOGICAL COLLECTION TECHNIQUES OR OTHER FORMS OF INFORMATION TECHNOLOGY, E.G. PERMITTING ELECTRONIC SUBMISSION OF RESPONSES, AND THE BASIS FOR THE DECISION FOR ADOPTING THIS MEANS OF COLLECTION. ALSO DESCRIBE ANY CONSIDERATION OF USING INFORMATION**

TECHNOLOGY TO REDUCE BURDEN.

AMS is committed to complying with the e-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. New paragraph 205.237(c) established the common practice of documenting and maintaining feed ration records as a requirement for all organic ruminant producers. To minimize disruption to the normal business practices of the affected producers, producers will be permitted to develop their own format for documenting the requirements of paragraph 205.237(c).

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION. SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN ITEM 2 ABOVE.

We have made every effort to contact appropriate sources within USDA, other Government agencies, and outside sources to ensure that we are not duplicating information collection. Some of the requirements for organic production and handling, certification, accreditation, State Organic Programs, peer review panels, and petitions to add substances to the National List are unique to the organic industry.

We encourage participants in the NOP to reduce the paperwork burden by establishing business operating plans and procedures that incorporate the NOP requirements.

5. IF THE COLLECTION OF INFORMATION IMPACTS SMALL BUSINESSES OR OTHER SMALL ENTITIES (ITEM 5 OF THE OMB FORM 83-1), DESCRIBE THE METHODS USED TO MINIMIZE BURDEN.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$6,500,000. Based on 2005 USDA, Economic Research Service, data from USDA-accredited certifying agents, U.S. certified organic acreage had increased to 4 million acres of which approximately 2.3 million was pasture and rangeland. The number of U.S. certified organic crop, livestock, and handling operations totaled about 8,500. AMS believes that 90 percent of these entities would be considered small entities under the criteria established by the SBA.

6. DESCRIBE THE CONSEQUENCE TO FEDERAL PROGRAM OR POLICY ACTIVITIES IF THE COLLECTION IS NOT CONDUCTED OR IS CONDUCTED LESS FREQUENTLY, AS WELL AS ANY TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN.

If the collection of information was not conducted or was conducted less frequently, the Agency would not be able to carry out the intent of Congress as it enforces the OFPA. This oversight, as mandated by the OFPA, includes an annual inspection of certified producers and handlers. The accreditation of certifiers requires written documentation of their management activities.

Every attempt possible has been made to create the regulation to incorporate existing documents and allow flexibility to certifiers, producers, and handlers. Certified operations will be required only to submit annual updates of information after their initial application has been submitted. Certifying agents are encouraged to use existing documents to meet the requirements of accreditation, rather than creating new

documents.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES THAT WOULD CAUSE AN INFORMATION COLLECTION TO BE CONDUCTED IN A MANNER:

- REQUIRING RESPONDENTS TO REPORT INFORMATION TO THE AGENCY MORE OFTEN THAN QUARTERLY;

- REQUIRING RESPONDENTS TO PREPARE A WRITTEN RESPONSE TO A COLLECTION OF INFORMATION IN FEWER THAN 30 DAYS AFTER RECEIPT OF IT;

- REQUIRING RESPONDENTS TO SUBMIT MORE THAN AN ORIGINAL AND TWO COPIES OF ANY DOCUMENT;

- REQUIRING RESPONDENTS TO RETAIN RECORDS, OTHER THAN HEALTH, MEDICAL, GOVERNMENT CONTRACT, GRANT-IN-AID, OR TAX RECORDS FOR MORE THAN 3 YEARS;

The OFPA § 6511(d)(1) and the implementing regulations § 205.103(b)(3)

requires that producers and handlers maintain records concerning the production and handling of agricultural products sold or labeled as organically produced for 5 years.

- IN CONNECTION WITH A STATISTICAL SURVEY, THAT IS NOT DESIGNED TO PRODUCE VALID AND RELIABLE RESULTS THAT CAN BE GENERALIZED TO THE UNIVERSE OF STUDY;

- REQUIRING THE USE OF A STATISTICAL DATA CLASSIFICATION THAT HAS NOT BEEN REVIEWED AND APPROVED BY OMB;

- THAT INCLUDES A PLEDGE OF CONFIDENTIALITY THAT IS NOT SUPPORTED BY AUTHORITY ESTABLISHED IN STATUE OR REGULATION, THAT IS NOT SUPPORTED BY DISCLOSURE AND DATA SECURITY POLICIES THAT ARE CONSISTENT WITH THE PLEDGE, OR WHICH UNNECESSARILY IMPEDES SHARING OF DATA WITH OTHER AGENCIES FOR COMPATIBLE CONFIDENTIAL USE; OR

- REQUIRING RESPONDENTS TO SUBMIT PROPRIETARY TRADE SECRET, OR OTHER CONFIDENTIAL INFORMATION UNLESS THE AGENCY CAN DEMONSTRATE THAT IT HAS INSTITUTED PROCEDURES TO PROTECT THE INFORMATION'S CONFIDENTIALITY TO THE EXTENT PERMITTED BY LAW.

There are no other special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

- 8. IF APPLICABLE, PROVIDE A COPY AND IDENTIFY THE DATE AND PAGE NUMBER OF PUBLICATION IN THE FEDERAL REGISTER OF THE AGENCY'S NOTICE, REQUIRED BY 5 CFR 1320.8(d), SOLICITING COMMENTS ON THE INFORMATION COLLECTION PRIOR TO SUBMISSION TO OMB. SUMMARIZE PUBLIC COMMENTS RECEIVED IN RESPONSE TO THAT NOTICE AND DESCRIBE ACTIONS TAKEN BY THE AGENCY IN RESPONSE TO THESE COMMENTS. SPECIFICALLY ADDRESS COMMENTS RECEIVED ON COST AND HOUR BURDEN.**

The 60-day notice is embedded in the proposed rule. That notice announced AMS' request for a NEW collection. Upon OMB's approval of this new information collection for NOP Reporting and Recordkeeping Requirements, we will request to merge this collection into currently approved OMB Control Number 0581-0191 National Organic Program Reporting and Recordkeeping Requirements.

DESCRIBE EFFORTS TO CONSULT WITH PERSONS OUTSIDE THE AGENCY TO OBTAIN THEIR VIEWS ON THE AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, THE CLARITY OF INSTRUCTIONS AND RECORDKEEPING, DISCLOSURE, OR REPORTING FORMAT (IF ANY), AND ON THE DATA ELEMENTS TO BE RECORDED, DISCLOSED, OR REPORTED.

The AMS maintains a working relationship with affected regulatory agencies to ensure compliances with existing laws and regulations. The National Organic Standards Board hold public meetings to discuss and make recommendations to the Secretary on

materials to be added or deleted from the National List of allowed and prohibited substances, and also to receive public comment on issues of concern to the industry.

CONSULTATION WITH REPRESENTATIVES OF THOSE FROM WHOM INFORMATION IS TO BE OBTAINED OR THOSE WHO MUST COMPILE RECORDS SHOULD OCCUR AT LEAST ONCE EVERY 3 YEARS -- EVEN IF THE COLLECTION OF INFORMATION ACTIVITY IS THE SAME AS IN PRIOR PERIODS. THERE MAY BE CIRCUMSTANCES THAT MAY PRECLUDE CONSULTATION IN A SPECIFIC SITUATION. THESE CIRCUMSTANCES SHOULD BE EXPLAINED.

The regulation is a synthesis of existing organic standards and certification programs. We have done extensive outreach to the industry including meetings of the NOSB with public input at each meeting; five public hearings focused on organic livestock production; review of existing industry standards and management practices; consideration of the NOSB recommendations and position papers which were presented to the Secretary only after extensive public comment and debate; presentations at national health food shows, each with question and answer sessions; official meetings between NOP staff members and private and State certification organizations to become familiar with their procedures; a national certifiers meeting to discuss accreditation issues; a meeting of State officials to discuss the relationship of States to the USDA and States to private certification organizations; attendance of NOP staff members at organic inspector meetings and training sessions; and numerous speaking engagements of the NOP staff to discuss specific issues surrounding organic production, handling, inspection, and certification. In addition, we have worked closely with affected regulatory agencies to

ensure compliance with existing laws and regulations. Some of the contacts include: Cathy Greene, Economist, Food and Consumer Economics Division, USDA/ERS, author of the Regulatory Impact Assessment, (202-594-5775); Bob Anderson, Former Chairman, NOSB, (814) 574-1063; and Caren Wilcox, Executive Director of the Organic Trade Association, (413) 774-7511.

9. EXPLAIN ANY DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS, OTHER THAN REMUNERATION OF CONTRACTORS OR GRANTEES.

There would be no payment or gift rendered to any respondent.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS AND THE BASIS FOR THE ASSURANCE IN STATUTE, REGULATION, OR AGENCY POLICY.

Evaluators reviewing private certifiers' confidential records would be Federal employees representing the USDA. The OFPA § 6515 (g) states "that any certifying agent shall maintain strict confidentiality with respect to its clients under the applicable organic certification program and may not disclose to third parties (with the exception of the Secretary or the applicable State Program's governing State official) any business related information concerning such client obtained while implementing this chapter." Section 205.504 (b)(4) of the rule further states that a private certifying agent shall establish policies for protecting the confidentiality of client records.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE. THIS JUSTIFICATION SHOULD INCLUDE THE REASONS WHY THE AGENCY CONSIDERS THE QUESTIONS NECESSARY, THE SPECIFIC USES TO BE MADE OF THE INFORMATION, THE

EXPLANATION TO BE GIVEN TO PERSONS FROM WHOM THE INFORMATION IS REQUESTED, AND ANY STEPS TO BE TAKEN TO OBTAIN THEIR CONSENT.

There are no questions being requested that are of a sensitive nature. The information we are seeking is directly related to the applicants' business activities as they relate to the NOP.

12. PROVIDE ESTIMATES OF THE HOUR BURDEN OF THE COLLECTION OF INFORMATION.

THE STATEMENT SHOULD:

- **INDICATE THE NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, ANNUAL HOUR BURDEN, AND AN EXPLANATION OF HOW THE BURDEN WAS ESTIMATED. UNLESS DIRECTED TO DO SO, AGENCIES SHOULD NOT CONDUCT SPECIAL SURVEYS TO OBTAIN INFORMATION ON WHICH TO BASE HOUR BURDEN ESTIMATES. CONSULTATION WITH A SAMPLE (FEWER THAN 10) OF POTENTIAL RESPONDENTS IS DESIRABLE. IF THE HOUR BURDEN ON RESPONDENTS IS EXPECTED TO VARY WIDELY BECAUSE OF DIFFERENCE IN ACTIVITY, SIZE, OR COMPLEXITY, SHOW THE RANGE OF ESTIMATED HOUR BURDEN, AND EXPLAIN THE REASONS FOR THE VARIANCE. GENERALLY, ESTIMATES SHOULD NOT INCLUDE BURDEN HOURS FOR CUSTOMARY AND USUAL BUSINESS PRACTICES.**

- **IF THIS REQUEST FOR APPROVAL COVERS MORE THAN ONE FORM, PROVIDE SEPARATE HOUR BURDEN ESTIMATES FOR EACH FORM AND AGGREGATE THE HOUR BURDENS IN ITEM 13 OF OMB FORM 83-I.**

- **PROVIDE ESTIMATES OF ANNUALIZED COST TO RESPONDENTS FOR THE HOUR BURDENS FOR COLLECTIONS OF INFORMATION, IDENTIFYING AND USING APPROPRIATE WAGE RATE CATEGORIES.**

The respondents' estimated annual cost of providing information to the USDA/NOP is \$115,182. This total has been estimated by multiplying 5,400 (total burden hours) by \$21.33, the average mean hourly earnings of organic

producers. Data for computation of this hourly wage were obtained for the U.S. Department of Labor Statistics' publication.

13. PROVIDE AN ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS OR RECORDKEEPERS RESULTING FROM THE COLLECTION OF INFORMATION. (DO NOT INCLUDE THE COST OF ANY HOUR BURDEN SHOWN IN ITEMS 12 AND 14).

- **THE COST ESTIMATE SHOULD BE SPLIT INTO TWO COMPONENTS: (a) A TOTAL CAPITAL AND START-UP COST COMPONENT (ANNUALIZED OVER ITS EXPECTED USEFUL LIFE); AND (b) A TOTAL OPERATION AND MAINTENANCE AND PURCHASE OF SERVICES COMPONENT. THE ESTIMATES SHOULD TAKE INTO ACCOUNT COSTS ASSOCIATED WITH GENERATING, MAINTAINING, AND DISCLOSING OR PROVIDING THE INFORMATION. INCLUDE DESCRIPTIONS OF METHODS USED TO ESTIMATE MAJOR COST FACTORS INCLUDING SYSTEM AND TECHNOLOGY ACQUISITION, EXPECTED USEFUL LIFE OF CAPITAL EQUIPMENT, THE DISCOUNT RATE(S), AND THE TIME PERIOD OVER WHICH COSTS WOULD BE INCURRED. CAPITAL AND START-UP COSTS INCLUDE, AMONG OTHER ITEMS, PREPARATIONS FOR COLLECTING INFORMATION SUCH AS PURCHASING COMPUTERS AND SOFTWARE; MONITORING, SAMPLING, DRILLING AND TESTING EQUIPMENT; AND RECORD STORAGE FACILITIES.**

- **IF COST ESTIMATES ARE EXPECTED TO VARY WIDELY, AGENCIES SHOULD PRESENT RANGES OF COST BURDENS AND EXPLAIN THE REASONS FOR THE VARIANCE. THE COST OF PURCHASING OR CONTRACTING OUT INFORMATION COLLECTION SERVICES SHOULD BE A PART OF THIS COST BURDEN ESTIMATE. IN DEVELOPING COST BURDEN ESTIMATES, AGENCIES MAY CONSULT WITH A SAMPLE OF RESPONDENTS (FEWER THAN 10), UTILIZE THE 60-DAY PRE-OMB SUBMISSION PUBLIC COMMENT PROCESS AND USE EXISTING ECONOMIC OR REGULATORY IMPACT ANALYSIS ASSOCIATED WITH THE RULEMAKING CONTAINING THE INFORMATION COLLECTION, AS APPROPRIATE.**

- **GENERALLY, ESTIMATES SHOULD NOT INCLUDE PURCHASES OF EQUIPMENT OR SERVICES, OR PORTIONS THEREOF, MADE: (1) PRIOR TO OCTOBER 1, 1995, (2) TO ACHIEVE REGULATORY COMPLIANCE WITH**

REQUIREMENTS NOT ASSOCIATED WITH THE INFORMATION COLLECTION, (3) FOR REASONS OTHER THAN TO PROVIDE INFORMATION OR KEEPING RECORDS FOR THE GOVERNMENT, OR (4) AS PART OF CUSTOMARY AND USUAL BUSINESS OR PRIVATE PRACTICES.

There are no capital and start-up costs associated with this new collection. Under the NOP (§ 205.103) each producer is required to maintain and make available upon request, for 5 years, such records as are necessary to verify compliance with the NOP.

- 14. PROVIDE ESTIMATES OF ANNUALIZED COST TO THE FEDERAL GOVERNMENT. ALSO, PROVIDE A DESCRIPTION OF THE METHOD USED TO ESTIMATE COST, WHICH SHOULD INCLUDE QUANTIFICATION OF HOURS, OPERATION EXPENSES (SUCH AS EQUIPMENT, OVERHEAD, PRINTING, AND SUPPORT STAFF), AND ANY OTHER EXPENSE THAT WOULD NOT HAVE BEEN INCURRED WITHOUT THIS COLLECTION OF INFORMATION. AGENCIES ALSO MAY AGGREGATE COST ESTIMATES FROM ITEMS 12, 13, AND 14 IN A SINGLE TABLE.**

The estimated annual cost to the Federal Government, which includes salaries, benefits, travel, communication, supplies, etc., to administer this regulation is \$120,000. The cost was developed by estimating the number of hours that the Agency employees will spend providing oversight and assistance for the administration, preparation of all stages of rulemaking, from the recommendation, to the proposed and final rule, as well as in the preparation of this information collection package (1,500) at approximately \$80 per hour.

- 15. EXPLAIN THE REASON FOR ANY PROGRAM CHANGES OR ADJUSTMENTS REPORTED IN ITEMS 13 OR 14 OF THE OMB FORM 83-1.**

This is a new collection request there are no changes or adjustments.

- 16. FOR COLLECTIONS OF INFORMATION WHOSE RESULTS WOULD BE PUBLISHED, OUTLINE PLANS FOR TABULATION, AND PUBLICATION. ADDRESS ANY COMPLEX ANALYTICAL TECHNIQUES THAT WILL BE USED. PROVIDE THE TIME SCHEDULE FOR THE ENTIRE PROJECT, INCLUDING BEGINNING AND ENDING DATES OF THE COLLECTION OF INFORMATION, COMPLETION OF REPORT, PUBLICATION DATES, AND OTHER ACTIONS.**

No publication of data obtained through the regulation is planned.

- 17. IF SEEKING APPROVAL TO NOT DISPLAY THE EXPIRATION DATE FOR OMB APPROVAL OF THE INFORMATION COLLECTION, EXPLAIN THE REASONS THAT DISPLAY WOULD BE INAPPROPRIATE.**

No new forms will be generated from this proposed collection.

- 18. EXPLAIN EACH EXCEPTION TO THE CERTIFICATION STATEMENT IDENTIFIED IN ITEM 19, "CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS," OF OMB FORM 83-1.**

This information collection does not employ statistical methods.