COMMENT

GOT ORGANIC MILK? "PASTURE"-IZE IT!: AN ANALYSIS OF THE USDA'S PASTURE REGULATIONS FOR ORGANIC DAIRY ANIMALS

By
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People who read organic milk carton labels likely imagine the cows behind the product grazing in wide-open pastures. While the United States Department of Agriculture's National Organic Program regulations require in numerous places that cows have "access to pasture," the Department has not established minimum pasture time for organic cows. The vague language has allowed the traditional vision of small family farms where cows spend their days nibbling on grass to be replaced, in many instances, by corporate-owned farms that resemble feedlots and house thousands of cows. This article discusses the "access to pasture" issue and analyzes the ambiguity that has lead to widely varied farming practices and finished products. The vague language undermines the goals of the National Organic Program and threatens the integrity of the organic seal. This article suggests ways to clarify the standards and offers alternative solutions to the problems facing consumers, organic food advocates, and farmers because of the vague regulations.

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I. INTRODUCTION

From traditional vegetables and fruits, to body care products and baby clothing, organics are a booming business.[1] Throughout the 1990s, organic sales increased by twenty percent each year.[2] In particular, sales of organic dairy products rose twenty-four percent in 2005, to about 2.1 billion dollars, making it the second largest segment in the organic foods industry.[3] Organic dairy foods range from staples like "milk and yogurt to include specialty items like jalapeno cheddar cheese and chocolate chip ice cream."[4] Demand for organic dairy products often outpaces supply.[5]

When perusing the dairy aisle of the supermarket, many consumers of organics look for the United States Department of Agriculture's (USDA) round green label to assure them that the products meet uniform and consistent standards.[6] However, vague language in the

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[1] *See generally* Carolyn Dimitri & Catherine Greene, *U.S. Dept. of Agric. (USDA), Econ. Research Serv., Publications, Discontinued Magazines, Agricultural Outlook, October 2002, Organic Food Industry Taps Growing American Market*, http://www.ers.usda.gov/publications/agoutlook/oct2002/ao295b.pdf (Oct. 2002) (marking the expansion of organic food offerings, the increasing demands for organic products, and identifying organic dairy as the most rapidly growing organic segment in the 1990s); Amy Cortese, *Wearing Eco-Politics on Your Sleeve*, N.Y. Times BU7 (Mar. 20, 2005) (describing fashion lines created with organic cotton, an "ecologically friendly fabric").

[2] Marian Burros, *U.S. Imposes Standards for Organic-Food Labeling*, N.Y. Times A22 (Dec. 21, 2000).

[3] Ann Meyer, *A Growing Market for Natural Foods: Demand for Organic Goods Creates Room for Some Alternatives*, Chi. Trib. CN3 (July 17, 2006).

[4] Kate Murphy, *More Buyers Asking: Got Milk Without Chemicals?*, N.Y. Times BU6 (Aug. 1, 1999).

[5] Minn Jordan, *USDA Considers Grazing Mandate for Certified Organic Milk*, L.A. Times C2 (July 2, 2006); *see also* Judith Weinraub & Walter Nicholls, *Organic Milk Supply Falls Short*, Wash. Post F1, F5 (June 1, 2005) (stating that during the summer of 2005 there was "not enough federal and state-certified production of organic milk to meet the ever-growing demand" and "dairy farmers all over the country ha[d] fallen short of their buyers' total orders").

[6] *See "What's In Store" FMI Consumer Survey Shows Few Know Dietary Guidelines, but They Know Grains*, Chicago (Business Wire) (May 8, 2006) (available at

USDA's National Organic Program regulations threatens the integrity of the organic seal. Many consumer advocates argue that the imprecise language allows some organic dairy farms to produce organic milk in ways that violate consumer perceptions of what organic farming should be.[7] Congress passed the Organic Foods Production Act (OFPA) in 1990 to "establish national standards . . . [and] assure consumers that organically produced products meet a consistent standard."[8] OFPA established the National Organic Production Program (NOP), which gave the USDA the authority to create rules to regulate the certification of "producers and handlers of agricultural products that have been produced using organic methods," including organic dairy products.[9]

However, a constant tension remains between three interests: the organic agriculture principles of farmers who believe in organics as a "movement," the actual certification regulations that have allowed the industry to grow into a mainstream market, and consumers' expectations regarding organic products.[10] Therefore, the meaning of "organic" and the policies behind the USDA regulations are always in question. Is organic production beneficial to the environment and a model of sustainable agriculture? Is it a framework for providing ethical and humane treatment of animals? Is it better for human health and nutrition? Is it for the benefit of small family farms? Or is it just a method of production to regulate a growing part of commerce? As the organic industry grew into a virtual cash cow, the tensions between farming principles, USDA regulations, and consumers' expectations became increasingly apparent.[11] Farmers, consumers, and advocates have become concerned about the loopholes and vagueness in the regulations, which allow for vast inconsistencies in organic farming practices and finished products.[12]

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http://investor.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-newsArticle&ID=1008637&highlight=organic) ("A survey commissioned by Hunt's Organic . . . reports that nearly one in four Americans find organic labeling helpful, especially if certified by the USDA, in providing additional assurance of quality and peace of mind when making choices to purchase 'good foods' to serve their families.").

7 *See generally* Jordan, *supra* n. 5 (asserting that "consumers are willing to pay more [for organic] because they believe it's produced to higher ethical standards that benefit the environment, the animals and family farmers").

8 7 U.S.C. § 6501 (2000).

9 7 U.S.C. § 6503 (2000).

10 *See generally* Samuel Fromartz, *Organic, Inc.: Natural Foods and How They Grew* 188, 192–94 (Harcourt, Inc. 2006) (articulating the dichotomy between those who wanted the regulations to protect the purity of organic agriculture and those who viewed them as the avenue for economic growth).

11 *See id.* at 188 (citing a farmer who addressed a farming conference and asked, "Are we an industry? Or are we a movement?").

12 *See generally* Mark Alan Kastel, *Cornucopia Institute, Maintaining the Integrity of Organic Milk*, http://www.cornucopia.org/dairysurvey/OrganicDairyReport/cornucopia_milkintregrity.pdf (Apr. 19, 2006) (examining the regulations and their enforcement in the organic dairy industry).

In 2006, Wal-Mart—"the world's largest retailer"[13]—announced it intended "to double its organic offerings"[14] and price organic food "at just 10 percent over the cost of conventional, i.e., non-organically produced, foods."[15] Wal-Mart is the nation's largest retailer of organic milk.[16] Wal-Mart's recent commitment to offering organic foods at lower prices brought mixed reactions.[17] Some consumer advocates say Wal-Mart's sale of organics will ultimately hurt organic farmers by driving down prices and squeezing them out of the marketplace.[18] Consumer advocates also claim it "will lower standards for the production of organic food and will undercut the environmental benefits of organic farming."[19] They further assert that the industrialization of organics threatens consumers' certainty that the products meet true organic standards.[20]

One consumer advocate asserts that when consumers purchase organic milk, they buy more than milk merely produced without hormones and antibiotics—they are buying into an organic ideal.[21] According to a policy analyst from the Cornucopia Institute, consumers of organics pay premium prices because they believe organic farmers produce foods using "higher ethical standards that benefit the environment, the animals and family farmers."[22] Some people who purchase organic milk believe that they are buying milk from cows grazed in wide-open pastures.[23] The traditional vision of an organic dairy may be of a small family farm where the cows spend their days nibbling grass; however, different kinds of dairy farms have emerged, including corporate-owned farms that resemble feedlots and house thousands of cows.[24] According to critics, cows in these operations have little chance

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13 Wal-Mart, *Wal-Mart Facts, Corporate Facts: Wal-Mart by the Numbers* 2, http://www.walmartfacts.com/FactSheets/Corporate_Facts.pdf (accessed Apr. 13, 2008).

14 Organic Consumers Assn., *Latest Organic News Briefs & Trends*, http://www.organicconsumers.org/2006/article_1029.cfm (July 7, 2006).

15 *When Wal-Mart Goes Organic*, N.Y. Times 4, 11 (May 14, 2006) (opinion article).

16 Melanie Warner, *Wal-Mart Eyes Organic Foods, and Brand Names Get in Line*, N.Y. Times A1, C4 (May 12, 2006).

17 *Id.* at A1 (highlighting potential advantages and disadvantages of Wal-Mart's plans).

18 *Id.* at A1, C4.

19 *Id.* at A1.

20 Organic Consumers Assn., *Open Letter to Wal-Mart from the Organic Consumers Association,* http://www.organicconsumers.org/2006/article_1009.cfm (July 4, 2006).

21 *See* Samuel Fromartz, The Hartman Group, *What Makes Food Organic? The Twinkie Problem*, http://www.organicconsumers.org/articles/article_716.cfm (June 7, 2006) (noticing that the value of organic foods is "reinforced by the farm on which it was produced").

22 Jordan, *supra* n. 5.

23 *See e.g. id.* (discussing how one consumer thought she was buying milk from "family farms with happy cows").

24 *See* Kastel, *supra* n. 12 (comparing the wide disparity between organic family farms and larger farms that maximize milk production; discussing the commercialization of organic dairy production).

to graze.[25] While the organic rules account for cows having "access to pasture" in numerous places,[26] the USDA has not established minimum pasture time for organic cows. Accordingly, farms interpret the NOP rules differently, utilizing loopholes in the regulations.[27] In particular, it is possible that some cows producing organic milk never leave their stalls because the regulations include a "stage of production" exception to the "access to pasture" requirement.[28] Given the average consumer's perception of what is "organic," this practice would arguably make some milk "more organic" than other milk in the minds of such consumers.

This lack of clarity is important for several reasons. First, the regulations do not define what part of the cow's nutrition should come from pasture, and they do not require an amount of time that cows should graze outdoors, as opposed to being kept in confinement.[29] This ambiguity leads to widely varied farming practices and finished products. Second, the "[access to pasture] issue underscores a much broader debate about the mission of the organic industry as it expands beyond its modest . . . roots into a multibillion-dollar" industry.[30] Some consumer advocates and small farmers fear that large companies are taking advantage of the vague regulations to create factory-like farms and believe this trend will deter consumers and threaten the livelihood of small farms.[31]

This article discusses the USDA's regulation of organic dairy, specifically focusing on the "access to pasture" issue in the NOP regulations for organic dairy livestock. Part II discusses the background of organic labeling regulations for dairy products. It begins with a discussion of the rise of the organic dairy industry and the need for regulation in this area. It also describes the development of OFPA and the

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25 Steve Karnowski, *OCA Boycott of Bogus Organic Milk Brands Putting Pressure on Nation's Largest Dairies & Retailers*, http://www.organicconsumers.org/articles/article_923.cfm (June 27, 2006); *see also* Andrew Martin, *Organic Milk Debate: Dairies Dispute 'Organic' Values*, Chi. Trib. (Jan. 10, 2005) (quoting George Siemon, a cofounder of Organic Valley, an organic farm cooperative, as saying, "You can't have these animals on a little piece of land and call it pasture") (available at http://www.organicconsumers.org/Organic/milk011105.cfm).

26 7 C.F.R. § 205.237(a) (2006) (requiring that all feed, including any "pasture and forage," be organically produced); *id.* at § 205.239(a)(2) (stating that "[t]he producer of an organic livestock operation must . . . accommodate the health and natural behavior of animals, including . . . [a]ccess to pasture for ruminants"); *id.* at § 205.239(b)–(b)(3) (2006) (allowing temporary confinement due to "[i]nclement weather" or "[t]he animal's stage of production").

27 Kastel, *supra* n. 12, at 19 (asserting some dairy operators abuse the "stage of production" exception to exempt working dairy cows from "access to pasture").

28 *Id.*

29 *Id.* at § 205.239(a)(2) (providing regulations that address "access to pasture").

30 Andrew Martin, *Organic Consumers Association, Consumer Milk vs. Organic Family Farmers*, http://www.organicconsumers.org/Organic/milk011105.cfm (Jan. 10, 2005).

31 *See* Kastel, *supra* n. 12, at 14 (asserting some organic farmers are struggling with increased costs "and worry about a future dominated by corporate interests").

subsequent NOP rules established by the USDA to regulate organic products. Finally, it discusses the specific regulations pertaining to organic dairy and the recent legal developments and trends in the industrialization of organic dairies that have led many advocates to criticize the efficacy and integrity of the USDA's NOP. Part III analyzes the current regulations concerning "access to pasture." It discusses the inconsistencies and ambiguities of the regulations and explains how the unclear language affects consumers, farmers, the environment, and the health of organic livestock. Part III closes with an exploration of the consequences of more strict regulation of the organic industry. Part IV offers suggestions for clarifying the standards and alternative solutions to the problems facing consumers, organic food advocates, and farmers because of the vague regulations.

II. BACKGROUND

A. The Rise of Organic Dairy

Organic agriculture in the United States began as a grassroots movement in the 1960s.[32] By 1985, the popularity of organic farming had increased out of a concern for the effects of industrial agricultural practices on the environment.[33] Organic farming grew out of "a range of motives and movements: back-to-the-land simplicity, agrarianism, anti-industrialism, environmentalism, nutritional and health concerns, and, of course, the love of fresh, whole, natural food."[34] Dairy farmers began using these principles in producing milk by raising cows on organic feed in an environmentally sustainable manner without the use of hormones and excess medicines.[35]

Organic milk gained a following for many reasons. Some consumers began to buy organic milk because of their reaction to the inhumane treatment of animals in factory farms.[36] They believed "organic

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[32] *A New Organic Era*, N.Y. Times A18 (Oct. 21, 2002) (noting the transformation of organic farming from a "fringe movement" to a nine billion dollar industry).

[33] Jane E. Brody, *Organic Farming Moves Toward Mainstream America*, N.Y. Times C2 (Oct. 8, 1985) (quoting Robert Rodale, of the Rodale Research Center, in a discussion of modern American agricultural trends that generate vast production but are also "destructive of all systems").

[34] Fromartz, *supra* n. 10, at xiii.

[35] *See e.g.* Straus Family Creamery, *Farm Tales, Why We Love Organic*, http://www.strausfamilycreamery.com/?title=why%20we%20love%20organic (accessed Apr. 13, 2008) ("In the late 70s the Straus dairy stopped using synthetic pesticides and herbicides. The use of chemical fertilizers ended in the early 80s.").

[36] *See e.g.* Kastel, *supra* n. 12, at 4 ("Many consumers assume that humane animal husbandry practices are employed by organic farmers."); *see also* A. Bryan Endres, *An Awkward Adolescence in the Organics Industry: Coming to Terms with Big Organics and Other Legal Challenges for the Industry's Next Ten Years*, 12 Drake J. Agric. L. 17, 45 (2007) ("[M]any consumers and pioneers in the organic movement associate 'organic' meat, poultry, and dairy products with a high level of animal welfare.").

cows" were raised in healthier, more natural conditions.[37] When cows are raised in close confinement, farmers often have to use excessive amounts of antibiotics and medicine to prevent disease.[38] In 1991, after "revelations of antibiotic residues in milk," some consumers switched to organic milk.[39] Organic dairy sales also received a boost in the few years following the Food and Drug Administration's (FDA) approval in 1993 of the use of Recombinant Bovine Growth hormone (rbGH) to increase milk production in cows.[40] The FDA approved the hormone despite criticism and safety concerns expressed by scientists, economists, farmers, and environmental groups.[41] Instead of requiring food companies to label milk produced with rbGH as such, the FDA allows food companies to voluntarily decide whether or not to disclose rbGH use.[42] Some consumers began buying organic milk because they thought it was safer and healthier for their families.[43] Some consumers were attracted to organic milk because people often look toward buying basic staples when first deciding to purchase organic offerings.[44]

A report from a market research firm, Packaged Facts, indicates that "Conscientious Consumerism" trends and consumer interest in purchasing "ethical edibles" are growing.[45] In addition, the FDA recently announced that it will not label meat and dairy produced from cloned animals,[46] while the USDA's NOP includes "methods to geneti-

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[37] *See generally* Robert Pear, *Tougher Labeling for Organic Food*, N.Y. Times A1 (May 9, 1998) (quoting Mike Menchetti of the Pugent Consumer Co-op as saying "Consumers expect organic to mean 'produced naturally'").

[38] Barbara O'Brien, Student Author, *Animal Welfare Reform and the Magic Bullet: The Use and Abuse of Subtherapeutic Doses of Antibiotics in Livestock*, 67 U. Colo. L. Rev. 407, 412 (1996).

[39] Marian Burros, *Developing a Taste for Organic Milk*, N.Y. Times *C6* (Oct. 30, 1996).

[40] *Id.* (describing how the sales of organic milk in 1996 totaled thirty million dollars, whereas three years before, organic milk sales had had been "too slight to tally").

[41] *See* Kristine Cerro, Student Author, *High-Tech Cows: The BST Controversy*, 6 San Joaquin Agric. L. Rev. 163, 167 (1996) (analyzing the controversial approval of rbGH use in cows in three main areas: the environmental impact, the economic impact, and health and safety considerations).

[42] 59 Fed. Reg. 6279, 6280 (Jan. 3, 1994).

[43] Burros, *supra* n. 39; *see also* Melinda Fulmer, *Organic Milk Pours into Mainstream Food: Concern About Drugs Used to Treat Dairy Cows Helps Boost Sales of Product Despite Higher Prices and Lack of Scientific Evidence*, L.A. Times C1 (July 24, 1999) (noting that the "uncertainty" about the hormone is sufficient to steer consumers toward paying extra for organic milk); Susan Gilbert, *Fears Over Milk, Long Dismissed, Still Simmer*, N.Y. Times F7 (Jan. 19, 1999) (discussing the Canadian government's rejection of use of the hormone and the subsequent cautiousness of U.S. consumers).

[44] Fromartz, *supra* n. 10, at 218 (quoting a marketing executive from Horizon Organic as saying, "When people look for organic food choices, they often look at the foods they consume the most").

[45] The Cornucopia Inst., *Market for Conscientious Consumerism Soaring*, http://cornucopia.org/index.php/?p=210 (accessed Apr. 13, 2008).

[46] Press Release, Found. FDA, *FDA Issues Documents on the Safety of Food from Animal Clones: Agency Concludes that Meat and Milk from Clones of Cattle, Swine, and Goats, and the Offspring of All Clones, Are as Safe to Eat as Food from Conventionally*

cally modify organisms" in its definition of "excluded methods," which likely prohibits cloned animal products from being labeled organic.[47] Therefore, consumers wishing to stay away from cloned animal products can feel secure buying organic and the demand for organic dairy items will likely continue to rise.

B. The Organic Foods Production Act of 1990 and the National Organic Program Regulations

Before Congress passed OFPA, the definition of "organic" varied among the states.[48] Consumers could not be confident that what they were purchasing was organic.[49] States regulated organics with a patchwork of definitions and a hodgepodge of certification programs.[50] Throughout a large part of the 20th century, the Federal Food, Drug, and Cosmetic Act (FFDCA), implemented and administered by the FDA, regulated all food products, cosmetics, drugs, and medical devices.[51] Presumably, the FFDCA and its provisions providing for a libel action against producers of misbranded food would have regulated foods labeled as "organic."[52] However, the lack of a federal definition of "organic" meant that neither the FDA nor the USDA could monitor organic labeling.[53] Consequently, claims of organic production methods went largely unchecked at the federal level.[54] Indeed, the legislative history of OFPA makes clear that much of Title VII of the OFPA

Bred Animals (Jan. 15, 2008) (available at http://www.fda.gov/bbs/topics/NEWS/2008/NEW01776.html).

47 7 C.F.R. § 205.2 (2007); *See also* FDA Center for Veterinary Medicine, *Animal Cloning: FAQS About Cloning for Livestock Managers*, http://www.fda.gov/cvm/CloningRA_FAQProducers.htm (accessed Apr. 13, 2008).

48 Denise Webb, *Eating Well*, N.Y. Times C10 (June 7, 1989) ("While a few states have organic standards, neither the standards nor their enforcement is consistent.").

49 *See* 136 Cong. Rec. H3078 (daily ed. Mar. 1, 1990) (Representative DeFazio stated that "the lack of a national definition for the term 'organically produced' stands like a wall between buyer and seller . . . It's time growers and consumers got a clear picture of just what organically grown really means").

50 *See* Leo H. Carney, *Organic Farming Increasing in State*, N.Y. Times NJ4 (Nov. 24, 1991) (Carol Shipp, a State Department of Agriculture spokeswoman, said that until a uniform definition was created, "what is considered organic in one state is not organic in another state").

51 21 U.S.C. §§ 301–397 (2000).

52 *See e.g. Cases of Jam v. U.S.*, 340 U.S. 593, 594 (1951) (libel action for labeling a product "jam" under the FFDCA when it was comprised of only twenty-five percent fruit when the federal standard that defined "jam" required at least forty-five percent fruit).

53 *See e.g.* 62 Fed. Reg. 65850, 65855 (Dec. 16, 1997) ("USDA regulation of labeling claims for organic food would allow the USDA and other federal agencies whose jurisdiction includes ensuring the veracity of labeling claims to prosecute those who mislabel products sold as organic. . . . Establishing a national definition for organic would be expected to increase the supply and variety of organic products, especially meat and poultry, available to consumers.").

54 *See* Marian Burros, *U.S. to Subject Organic Foods, Long Ignored, to Federal Rules*, N.Y. Times A1 (Dec. 14, 1997) (asserting that the USDA is finally proposing regulations "[a]fter years of ignoring the organic food industry").

broke "new ground for the Federal government and [required] the development of a unique regulatory scheme."[55]

In 1990, Congress passed OFPA "to establish national standards governing the marketing of certain agricultural products as organically produced products."[56] Further goals of OFPA were "to assure consumers that organically produced products meet a consistent standard" and "to facilitate interstate commerce in fresh and processed food that is organically produced."[57] The legislative history also makes clear that OFPA "does not attempt to make scientific judgments about whether organically produced food is more healthful, nutritious, or flavorful than conventionally produced food."[58]

OFPA required the USDA to establish the NOP to regulate the production of organics.[59] The Act also required the Secretary of Agriculture to appoint a fifteen-member National Organic Standards Board (NOSB) to advise the Secretary on aspects of implementing the NOP.[60] The legislative history indicates that the NOSB was to play a key role in the development and implementation of regulations "as an essential advisor to the Secretary on all issues concerning" NOP.[61] Because the NOSB was comprised of members from every segment of the organic industry, including farmers, retailers, consumers, and environmentalists,[62] it would theoretically be able to protect all interests.[63]

It took more than a decade for the USDA to promulgate final regulations implementing OFPA. The first set of proposed regulations was introduced in 1997.[64] In 2002, the USDA fully implemented the NOP regulations as the uniform standards for the production and handling of agricultural products in the United States.[65] The regulations require that products labeled as organic originate from farms or handling operations certified by a USDA accredited state or a USDA accredited private entity.[66] To receive an organic certification, a farm must submit an "organic production or handling system plan" (OSP) to the certifying accredited agent for approval.[67]

While different parties within the organic industry agreed on the need for regulation, they disagreed on what was or should be the na-

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55 Sen. Rpt. 101-357 at 293 (July 6, 1990) (reprinted in 1990 U.S.C.C.A.N. 4656, 4947).

56 7 U.S.C. § 6501(1).

57 *Id.* at § 6501(2)–(3).

58 Sen. Rpt. 101-357 at 293.

59 7 U.S.C. § 6503(a) (2000).

60 7 U.S.C. § 6518(a)–(b) (2000).

61 Sen. Rpt. 101-357 at 296.

62 7 U.S.C. § 6518(b).

63 Sen. Rpt. 101-357 at 296 ("[T]he membership of this Board was carefully selected to provide a balance of interests.").

64 62 Fed. Reg. 65850 (Dec. 16, 1997).

65 65 Fed. Reg. 80548, 80551 (Dec. 21, 2000).

66 7 U.S.C. §§ 6514–6516 (2000); 7 C.F.R. § 205.400 (2007).

67 7 C.F.R. § 205.400(b); *see also* 7 U.S.C. § 6504(3) (2000) (further outlining the requirements for certification).

ture of the organic market.[68] Some thought the regulations betrayed the "purist vision of what organic practices should be—a vision of small farms, whole food, and local distribution," while others believed that strong rules would help increase organic consumption and get more farmers into the market.[69] Consequently, defining the regulations became the battleground where each interest group sought to advance its view.[70]

C. *Organic Dairy Regulations and Recent Developments*

OFPA contains very little on organic livestock or dairy standards. The legislative history implies that this was due to a lack of knowledge and consensus on organic livestock production methods and materials, and explicitly states that "[w]ith additional research and as more producers enter into organic livestock production . . . the USDA, with the assistance of the [NOSB] will elaborate on livestock criteria."[71] Part 205 of the NOP regulations includes requirements for the production of organic dairy livestock.[72] The four main areas of the regulations include the "[o]rigin of livestock,"[73] "[l]ivestock feed,"[74] "[l]ivestock health care practice standards,"[75] and "[l]ivestock living conditions."[76] In general, organic farmers must feed cows organically produced agricultural products, including grain and pasture.[77] Farmers are prohibited from administering "drug[s], other than vaccinations, in the absence of illness; . . . hormones for growth promotion;" and parasite-killing chemicals.[78] In addition, cows must have "[a]ccess to the outdoors, shade, shelter, exercise areas, fresh air, [] direct sunlight . . . pasture for ruminants . . . [and] clean, dry bedding."[79] Temporary confinement is permitted for inclement weather, an animal's stage of production, and health and safety.[80]

This Comment focuses on the issue of "access to pasture" within the NOP regulations. However, since the implementation of the regu-

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68 Fromartz, *supra* n. 10, at 193.

69 *Id.* at 193–94.

70 *Id.* at 194.

71 Sen. Rpt. 101-357.

72 7 C.F.R. §§ 205.236–205.239 (2000).

73 *Id.* at § 205.236 ("Livestock products that are to be sold, labeled, or represented as organic must be from livestock under continuous organic management from the last third of gestation" with an exception for dairy animals that have "been under continuous organic management beginning no later than 1 year prior to the production of the milk . . . that [is] to be sold, labeled, or represented as organic.").

74 *Id.* at § 205.237.

75 *Id.* at § 205.238.

76 *Id.* at § 205.239.

77 *Id.* at § 205.237 (detailing the acceptable practices for organic livestock feed and specifying that cows may not be fed formulas containing urine, manure, "plastic pellets for roughage[,] . . . mammalian or poultry slaughter by-products").

78 7 C.F.R. § 205.238(c).

79 7 C.F.R. § 205.239(a).

80 *Id.* at § 205.239(b).

lations, many advocates have claimed that there has been a steady attempt to weaken organic standards, particularly relating to organic dairy.[81] For example, in 2003, Congressman Nathan Deal added a last-minute provision to a spending bill, with no input from USDA or NOSB, that permitted "'organic' livestock to be fed non-organic feed when organic feed is twice the price of conventional feed."[82] Two weeks later, Congress reversed the effects of the amendment and vowed to protect organic standards from further assaults.[83]

In 2004, the USDA issued a guidance statement that explained the use of antibiotics and hormones in cows that produce organic milk.[84] Some critics argued that the statement was not a clarification, but was a new policy that expanded the use of antibiotics and hormones in cows that produced organic milk.[85] In addition, the directive allowed farmers to feed organic livestock fishmeal even if it contained synthetic preservatives or toxins.[86] By labeling the documents "guidance statements," the administrators effectively changed organic standards without the public notice and comment procedures normally required for agency rulemaking.[87] The USDA rescinded the directives after a "firestorm" raged within the organic community.[88]

Frustrated with regulations that he believed were more lax than OFPA intended, Arthur Harvey, an organic blueberry farmer, sued the USDA in 2002 on nine counts, arguing that many provisions of the NOP were inconsistent with OFPA.[89] The seventh count of his complaint concerned the transitioning of conventional dairy herds into or-

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81 *An Organic Drift*, N.Y. Times A1 (Nov. 4, 2005) (explaining that the tension between smaller farmers and industry giants is a "cultural battle, a struggle between the people who have long kept the organic faith . . . and industry giants that see a rapidly expanding and highly profitable niche that can be pried open even further with lobbying").

82 Marian Burros, *Eating Well: U.S.D.A. Enters Debate on Organic Label Law*, N.Y. Times F1 (Feb. 26, 2003).

83 Elizabeth Becker, *Both Parties Begin Effort to Restore Organic Standard*, N.Y. Times A28 (Feb. 7, 2003).

84 Natl. Organic Program, *Guidance Statement: Livestock Health Care Practice Standard, Origin of Dairy Livestock* (Apr. 13, 2004) (available at http://www.organicconsumers.org/organic/usdaantibioticsdirective.pdf).

85 Nicholas A. Heike, *Organic Dairies Dodge a Bullet with the Rescission of New USDA Guidance and Directives*, 10 Drake J. Agric. L. 567, 578–80 (2005) (discussing how the USDA defined the statements as "clarification" of the rules and therefore claimed the directives fell within the exception in the Administrative Procedure Act that does not require public comment).

86 Carol Ness, *Organic Food Fight, Outcry Over Rule Changes That Allow More Pesticides, Hormones*, S.F. Chron. A1 (May 22, 2004).

87 Heike, *supra* n. 85, at 579–80.

88 Marian Burros, *Agriculture Dept. Rescinds Changes to Organic Food Standards*, N.Y. Times A17 (May 27, 2004).

89 *Harvey v. Veneman*, 396 F.3d 28 (1st Cir. 2005); *see also* Andrew Martin, *Berry Farmer's Suit Stuns Organic Goliaths*, Chi. Trib. C1 (Aug. 11, 2005) (quoting the *Harvey* court as saying that if consumers know their food is "more organic" they will be willing "to spend an extra 25 cents").

ganic production.[90] The First Circuit ruled for Harvey on three of his nine counts, including his claim concerning the conversion of dairy livestock.[91] Based on the court's decision, the USDA was required to strengthen the organic standards.[92] However, Congress amended OFPA to allow many of the NOP rules to stand as they were.[93] If Congress had not amended OFPA to restore it to pre-lawsuit status, compliance with the new standards would have been a huge financial setback to the organic dairy industry.[94]

These examples demonstrate that the organic rules are always in flux and always susceptible to attack. The recent debate about what role pasture should play in the production of organic milk further illustrates some consumers' fears that the organic label is losing its meaning.

D. Background of the "Access to Pasture" Issue

In order to discuss what role pasture should play in organic dairy farms, it is important to consider the different types of dairy farms that exist in the United States. Generally, "only 5 to 15 percent of all dairy farms graze their animals."[95] The other extreme is a confinement model, which may consist of a warehouse housing hundreds or thousands of cows that never go outdoors.[96] At farms with larger herds, cows eat less forage and farmers are more likely to feed them

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[90] *Harvey*, 396 F.3d at 33, 43–44. While OFPA states that "a dairy animal from which milk . . . will be sold or labeled as organically produced shall be raised and handled in accordance with this chapter for not less than the 12–month period immediately prior to the sale of such milk . . . ," the NOP regulations also allow for an exception to the twelve month requirement for "an entire, distinct herd" being converted into organic production. *Id.* In this case, the producer may provide a minimum of eighty percent organic feed for the first nine months as long as one hundred percent organic feed is provided the last three months. *Id.* Harvey argued that the eighty percent option directly conflicted with the plain language of OFPA. *Id.* at 33. The court agreed and stated that "[n]othing in the Act's plain language permits creation of an 'exception' permitting a more lenient phased conversion process for entire dairy herds." *Id.* at 44.

[91] *Id.* at 45–46.

[92] Natl. Organic Program, *Impact of* Harvey v. Johanns *and Restoring the NOP to Pre-lawsuit Status*, A Report to Congress 7–11 (Mar. 2006) available at http://www.ams.usda.gov/afsic/pubs/orgUSDApubs.html; *select* Impact of *Harvey v. Johanns* and Restoring the NOP to Pre-Law Suit Status: http://www.ams.usda.gov/nop/NOPCongressStudy1_06_06.pdf) (reporting the consequences of the *Harvey* lawsuit and possible detrimental effects on organic businesses that would have had to comply with the court's rulings).

[93] *Id.* at 4.

[94] *See id.* at 11–13 (discussing the effects of losing the feed exception to the dairy industry).

[95] Fromartz, *supra* n. 10, at 220.

[96] *Id.* ("The EPA designates these large farms as Concentrated Animal Feedlot Operations (CAFOs).").

corn, other grains, and supplements.[97] Most farms "use some combination of pasture, barn, and feedlot."[98]

When Congress drafted OFPA in 1990, "many private certification standards did not require pasture for ruminant animals."[99] "Certification standards for dairy herds permitted a wide range of practices, from pasture-based systems to conventional dry-lot operations."[100] Therefore, OFPA was silent on specific requirements of pasture for organic dairy cows, but authorized the NOSB to guide the USDA in the implementation of the NOP standards.[101] The first proposed rule, issued in December 1997, required access to pasture, but also stated that, "if necessary, animals could be maintained under conditions that restrict the available space for movement or access to the outdoors if other living conditions were still met so that animal's health could be maintained."[102] Public comments regarding the proposed rule issued in March 2000, expressed that the "access to pasture" requirement "did not adequately describe the relationship that should exist between ruminants and the land they graze."[103] Many public comments "requested that the final rule *require* that ruminant production be 'pasture-based'" and the NOSB also supported such a requirement.[104]

Other comments the USDA received stated that a uniform definition of pasture was inappropriate for universal application because, in part, of the "diversity of growing seasons, environmental variables, and forage and grass species."[105] The USDA retained the proposed "access to pasture" requirement in the final regulations, but did not include specifics about how much pasture cows should have.[106] The final rule also retained provisions allowing for temporary confinement of animals under certain conditions, such as "inclement weather" and "stage of production."[107]

Following the final regulations, "the NOSB continued work on a recommendation to address the relationship between ruminant animals, conditions for temporary confinement of ruminant animals, and

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97 Kate Clancy, *Union of Concerned Scientists, Greener Pastures: How Grass Fed Beef and Milk Contribute to Healthy Eating*, http://www.ucsusa.org/food_and_environment/sustainable_food/greener-pastures.html; *search* "Greener Pastures" (last updated Aug. 16, 2006).

98 Fromartz, *supra* n. 10, at 220.

99 71 Fed. Reg. 19131, 19132 (Apr. 13, 2006).

100 *Id.*

101 7 U.S.C. § 6509(d)(2) (2000).

102 71 Fed. Reg. at 19132.

103 *Id.*

104 *Id.* (emphasis in original).

105 *Id.* These comments suggested that "agents should work with livestock producers to evaluate pasture on an individual farm basis" and urged that "pasture should be only one of several components of balanced livestock nutrition." *Id.* In addition, it was argued that "making pasture the foundation for ruminant management would . . . deprive crop producers of the revenue and rotation benefits they could earn by growing livestock feed." *Id.*

106 65 Fed. Reg. 80561 (Dec. 21, 2000).

107 *Id.*

pasture."[108] However, the USDA did not accept or implement any of the recommendations. On January 10, 2005, the Cornucopia Institute of Wisconsin (Cornucopia), which is "a small-farm-advocacy and corporate-watchdog group," filed a complaint with the NOP against Aurora Organic claiming, in part, that "[c]limatic conditions—such as arid climate, which makes pasture impractical or not cost-effective—cannot be used to justify year-round noncompliance with the pasture rule."[109] In February 2005, the NOSB requested the NOP to interpret the existing pasture regulations through a guidance statement, and proposed a draft of the guidance.[110] The NOSB guidance would have imposed particular minimums with regard to the amount of pasture provided per animal in a livestock producer's organic system plan (OSP).[111] Specifically, the guidance required farmers to provide "grazed feed greater than 30 percent of the total dry matter intake on a daily basis during the growing season but not less than 120 days."[112] The NOSB's guidance also indicated the regional Natural Resources Conservation Service (NRCS) Conservation Practice Standards for Prescribed Grazing would determine "appropriate pasture conditions."[113] The USDA issued an advanced notice of proposed rulemaking to seek input on the pasture issue in April 2006, suggesting topic areas such as consumer preferences, the role of pasture in the lives of dairy cows, ruminant animal nutrition, the implications of adopting minimum pasture requirements, measurement enforcement and compliance of such requirements, and their market impact.[114]

The debate about the unclear "access to pasture" regulations comes at a time when organic milk is more popular than ever; in 2005, "organic milk sales increased by 25 percent from the year before . . ., [with] organic dairy represent[ing] 3.5 percent of all dairy products sold in the United States."[115] As more giant retailers such as Wal-

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108 71 Fed. Reg. at 19132. In June 2000, the NOSB recommended that confinement "should be restricted to short-term events such as birthing of newborns . . . and should specifically exclude lactating dairy animals." *Id.* In June 2001, it recommended that "ruminant livestock must have access to graze pasture during the months of the year when pasture can provide edible forage, and the grazed feed must provide a significant portion of the total feed requirements." *Id.* In February 2005, it "proposed to replace the phrase 'access to pasture' with the phrase "ruminant animals grazing pasture during the growing season." *Id.*

109 Fromartz, *supra* n. 10, at 231.

110 71 Fed. Reg. at 19132–33.

111 *Id.* at 19133 ("For livestock operations with ruminant animals, the OSP must describe: (1) The amount of pasture provided per animal; (2) the average amount of time that animals are grazed on a daily basis; (3) the portion of the total feed requirement that will be provided from pasture; (4) circumstances under which animals will be temporarily confined; and (5) the records that are maintained to demonstrate compliance with pasture requirements.").

112 *Id.*

113 *Id.*

114 *Id.* at 19131, 19133–34.

115 Melanie Warner, *A Milk War over More than Price*, N.Y. Times C2 (Sept. 16, 2006).

Mart offer organic products at lower prices to satisfy the high demand, more quasi-industrial farms will likely emerge because smaller farms and cooperatives cannot compete with their prices.[116] Wal-Mart sells organic milk at lower prices than any other retailer, which pressures every retailer and supplier to lower its prices.[117] According to critics, the current vague regulations "will become watered down unless firm standards are maintained" as "factory farms" attempt to maximize milk production.[118] Possibly thirty percent of the organic milk sold in the country comes from cows that are not raised on pasture.[119] Two examples that critics often use to illustrate these concerns are Aurora Organic Dairy and Horizon Organic. Aurora Organic Dairy, a Colorado company, houses four to five thousand cows at the foot of the Rocky Mountains and has another operation in Texas.[120] Horizon Organic, a subsidiary of Dean Foods, the nation's largest dairy producer, controls fifty-five percent of the market and is a supplier of Wal-Mart.[121] Horizon took over an abandoned Idaho farm and transformed it into one "which eventually housed four thousand cows."[122] While these farms may not resemble a Concentrated Animal Feeding Operation (CAFO), neither do they resemble traditional organic dairy farms. As early as 1993, the co-founder of Horizon described "mandated pasture as a hardship on organic dairy producers."[123] The Idaho farm converted by Horizon was the first of many industrial-sized organic dairy operations to emerge, "capturing about 20 percent of the organic milk market."[124] While the owners of these farms argue that the "system of sheltered outdoor pens was best for animal health in the dry region," critics see only a "factory farm" pursuing a lax organic model to pump out more milk and "mak[e] money by skirting organic pasture rules."[125]

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116 *See e.g.* Melanie Warner, *What is Organic? Powerful Players Want a Say*, 154 N.Y. Times C1, C4 (Nov. 1, 2005) (describing how "a cooperative of mostly small organic dairy farmers wrestled with the high cost of organic production . . . when Wal-Mart asked for a 20 percent price cut" and the cooperative had been Wal-Mart's main supplier of organic milk for three years).

117 *See e.g. When Wal-Mart Goes Organic*, *supra* n. 15 (claiming that Wal-Mart's influences may result in "the very antithesis of what organic should be"); *see also* Warner, *supra* n. 116 (explaining how larger companies can supply chains like Wal-Mart more cheaply than smaller organic farmers and producers).

118 *See* Warner, *supra* n. 116 (commenting on the growing trend of large food companies' desire to offer organic foods along with their other products). Mark Kastel, a senior farm policy analyst at the Cornucopia Institute, observed "thousands of Holsteins confined to grassless, dirt-lined pens and eating from a long trough filled with 55% hay and 45% grains, mostly corn and soybeans" on a recent trip to a large "quasi-industrial" dairy farm. *Id.*

119 *Id.*

120 Kastel, *supra* n. 12, at 15.

121 Warner, *supra* n. 116.

122 Fromartz, *supra* n. 10, at 224.

123 *Id.* at 224.

124 *Id.* at 226.

125 *Id.* at 227.

III. ANALYSIS

A. *Critique of "Access to Pasture" Regulations*

While organic consumer advocates and others in the media have criticized larger organic dairies as undermining organic standards and principles, it is important to examine the actual text of OFPA and the NOP regulations to determine whether the regulations are consistent with the Act and what ambiguities in the regulations allow for such great variances in practices. Critical questions include whether organic dairy cows must graze most of the year or whether they may be considered organic when confined in pens, fed organic grain, and allowed to graze only as required by the animal's stage of production.

OFPA contains only minimal language concerning organic dairy livestock. Section 6509 of OFPA can be divided into three main mandates with respect to general organic livestock feed and healthcare practices: (1) the livestock must be fed "organically produced feed" that contains no "plastic pellets for roughage; manure refeeding; or . . . urea;"[126] (2) "growth promoters and hormones" may not be used on livestock animals to "stimulate growth or production;"[127] and (3) "antibiotics" or other medications shall not be used "in the absence of illness."[128] Although OFPA is silent on the role of pasture, it does state that the NOSB "shall" recommend standards for the care of livestock to ensure that it is organically produced.[129]

The ultimate NOP regulations recognized the importance of "the health and natural behavior of animals" and implemented a system that requires "access to pasture."[130] The relevant sections of the regulations control farming practices for livestock feed, livestock healthcare practice standards, and livestock living conditions.[131] While OFPA does not address the issue of pasture, the NOP regulations include the term "pasture" in three different rules[132] and also account for "access to the outdoors"[133] and "conditions which allow for exercise, freedom of movement, and reduction of stress."[134] Additionally, the rules explicitly refer to accommodating the "health and natural behavior of animals."[135]

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126 7 U.S.C. § 6509(c)(1)–(2).

127 *Id.* at § 6509(c)(3).

128 *Id.* at § 6509(d)(1)(A), (C). In addition, poultry and dairy livestock are subject to "unique, additional requirements" relating to organic eggs and dairy products. *Id.* at § 6509(e). The "additional requirement" in the dairy livestock provision requires that dairy products labeled as organic must "be raised and handled in accordance with this title [organic certification] for not less than the 12-month period immediately prior to the sale of such [dairy product]." *Id.* at § 6509(e)(2).

129 *Id.* at § 6509(d)(2).

130 7 C.F.R. § 205.239(a).

131 *Id.* at §§ 205.237–205.239.

132 *Id.*

133 *Id.* at § 205.239(a)(1).

134 *Id.* at § 205.238(a)(4).

135 *Id.* at § 205.239(a).

Section 205.237 of the rules details practices of "livestock feed."[136] It requires the "total feed ration" be composed of organically produced agricultural products *"including pasture and forage."*[137] The subsequent section describes health care standards that producers must maintain in order to prevent the spread of disease, including "appropriate housing [and] *pasture conditions*."[138] Section 205.239(a) requires producers to create and maintain living conditions that accommodate the animals' "health and natural behavior." These conditions include "access to the outdoors . . . exercise areas . . . [and] *access to pasture for ruminants.*"[139] Section 205.239(b) stipulates that any confinement due to inclement weather or "the animal's stage of production" may be used only "as a *temporary* measure."[140]

Two main issues arise from the vague regulatory language regarding animal health. The first issue concerns the quantity of grass and forage in an organic cow's feed.[141] The second issue concerns bovine health and natural behavior and how much time cattle should spend outdoors, rather than in confinement.[142] The current rules do not define the parameters of either requirement. The wording of the current regulations is ambiguous and allows for climate and ecological differences.[143] The rules create confusion by permitting farmers to confine cows temporarily in circumstances such as illness and certain "stages of production"—a reference to basic life events such as birth.[144] However, some large companies define "lactation" or milk production as a "stage of production" justifying confinement.[145] Given that a dairy cow

136 7 C.F.R. § 205.237.

137 *Id.* at § 205.237(a) (emphasis added).

138 *Id.* at § 205.238(a)(3) (emphasis added).

139 *Id.* at § 205.239(a)(1)–(2) (emphasis added).

140 *Id.* at § 205.239(b)(1)–(2) (emphasis added).

141 Unfortunately, the NOP regulations do not discuss the importance of grass for nutrition. However, the rules do stipulate that cow feed should include forage and pasture. 7 C.F.R § 205.237(a). The Center for Food Safety encouraged the USDA to adopt a dry matter intake recommendation based on "dairy business definitions used by Cornell University and the University of Wisconsin, which define grazing farms as those which provide at least 30 to 40 percent of dry matter from foraging pasture during the grazing season." Ctr. for Food Safety, *Comments on National Organic Program's ANPRM—Access to Pasture (Livestock)* 3, (June 12, 2006) (available at http://www.centerforfoodsafety.org/pubs/Organic_Comments_PastureANPRM6-12-06.pdf).

142 *See* 7 C.F.R. § 205.239(a)(1)–(4) (requiring farmers to provide access to pasture, access to the outdoors, as well as appropriate exercise conditions, and conditions that limit physical stress on the animals).

143 *See* Melissa Allison, *Organic-milk Fight Takes Aim at Grazing time*, Seattle Times (June 6, 2006) (available at http://seattletimes.nwsource.com/html/businesstechnology/2003042016_dairy06.html) (describing how one farmer notes that "grazing works well for us in Southwest Washington," but is "a little reluctant as a farmer to judge different areas of the country").

144 7 C.F.R. § 205.239(b)(2).

145 Kastel, *supra* n. 12, at 19 (claiming that large dairy operators have made statements akin to "all of our animals have access to pasture during some of their lives, or during some of the year, but due to 'stage of production' we do not pasture our lactating animals").

produces milk nearly half of its life in a dairy herd,[146] such an interpretation results in long-term confinement, notwithstanding the fact that the regulations specify that such exceptions to pasturing should only be "temporary."[147]

The issues of what actually constitutes "access to pasture" on an organic farm, and how long such access should last, remain unanswered questions. The rules are not explicit because the answer can differ so dramatically from Vermont to Colorado. However, when read as a whole, the only appropriate interpretation of the NOP regulations is a strict interpretation mandating a pasture-based system. It is clear from the text of the regulations that pasture is an important part of every aspect of organic livestock management. Whether regulating the food, health, or behavior aspects of livestock on organic farms, the NOP has included a requirement of pasture that seems to require dairy farms to graze animals.

From the text of OFPA, it is also clear that the NOSB should play an integral role in the formulation, implementation, and interpretation of the NOP standards. However, under NOP's Good Guidance Practices, guidance documents are not legally binding on the public or the program.[148] Therefore, the USDA may ignore the NOSB's recommendations without much oversight.[149] Indeed, it seems that the USDA has done just that, despite the NOSB's multiple attempts to recommend clarifications to this rule. Although OFPA certainly suggests that the NOSB would "fill in the gaps" in the regulations, in reality, its suggestions have not often made it into the rules.[150]

One of Congress's purposes in enacting OFPA was to "assure consumers that organically produced products meet a consistent standard."[151] Therefore, the NOP regulations should be clear, precise, and well defined in order to achieve that result. The current lack of clarity in the NOP regulations results in widely varied practices, which in turn results in inconsistency among final products.[152] While some organic farmers use a "pasture-based" system where forage accounts for

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146 Envtl. Protection Agency, *Lifecycle Production Phases*, http://www.epa.gov/oecaagct/ag101/dairyphases.html (accessed Apr. 13, 2008).

147 7 C.F.R. § 205.239(b)(2).

148 70 Fed. Reg. 5129 (Feb. 1, 2005). While the USDA considers guidance from the NOSB, there is no explicit requirement that the USDA must accept it. *See* 7 U.S.C. § 6518(a) ("The Secretary shall establish a National Organic Standards Board . . . to assist in the development of standards."); *id.* at § 6518(k)(1) ("The Board shall provide recommendations to the Secretary regarding implementation of this chapter.").

149 *See* Martin, *supra* n. 30 (discussing how the USDA has allowed factory farms to "proliferate" by its inaction over the pasture issue).

150 USDA, *National Organic Standards Board Meeting*, Vol I of III at 262 (Apr. 28, 2004) (available at http://www.ams.usda.gov/; *select* NOSB Archive, *select* Meeting Information, *select* April 18-30, 2004, *select* Meeting Transcripts, *select* Wednesday, April 28, 2004 (PDF)).

151 7 U.S.C. § 6501(2).

152 *See* Martin, *supra* n. 30 (illustrating the differences between how small farmers and larger famers interpret the term "organic").

most of the cows' feed, others rely mostly on grain, and give the cows little access to pasture.[153] There is definitive scientific evidence that milk from grass-fed cows is more nutritious than milk from grain-fed cows, which means that such products are very different.[154]

B. Impact of Current Regulations

1. Consumer Expectations

The success of the organics industry depends on consumers being confident in the quality and consistency of organic products.[155] Organic milk cartons often depict happy cows grazing on open pastures.[156] In addition, the numerous references to "access to pasture" and "access to the outdoors" in the USDA regulations support the validity of consumers' perception that organic cows live in natural conditions. Revelations that many cows do not spend their days munching on grass would likely cause customers to lose faith in the organic milk label.[157] In surveys, consumers have indicated that they would not buy organic milk if they knew that a significant quantity of organic cows were confined and not grazed on pasture.[158] The Organic Consumers Association urged consumers to boycott certain organic milk brands that they believe use factory farm-like practices.[159]

An ongoing problem with consumer expectations concerning organic labeling is the discrepancy between what consumers believe to be organic and what the regulations actually define as organic.[160] Consumers buy organic milk for many different reasons. Generally, "health and nutrition motivate 70 to 80 percent of organic shoppers" to make organic purchases.[161] Though the USDA defines organic agriculture through its means of production[162] and has repeatedly pointed out that the organic label does not reflect a health claim, the consumer perception of superior health and nutrition benefits did not come out of thin air. The increase in the popularity of organic food resulted from a reaction to agricultural methods that often put the desire to yield higher outputs ahead of concerns about human, animal and environ-

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153 *Id.*

154 Union of Concerned Scientists, *Study Finds More Good Fats in Grass-fed Beef and Dairy*, http://www.ucsusa.org/news/press_release/Grass-fed-Beef-and-Dairy-Study.html (Mar. 7, 2006).

155 *See* Sherri Day, *Five Questions for Michael F. Jacobson; The 'Organic' Label: Who Wins at the Bank?*, N.Y. Times B6 (Oct. 20, 2002) (Michael F. Jacobson asserting "deception in the market" hurts "the organic industry").

156 Allison, *supra* n. 143.

157 Organic Consumers Assn., *New Surveys Show Consumers Outraged by Bogus Organic Labels on Feedlot Dairy Products*, http://www.organicconsumers.org/organic/survey060417.cfm (Apr. 12, 2006).

158 *Id.*

159 Jordan, *supra* n. 5.

160 Michelle T. Friedland, *You Call That Organic? The USDA's Misleading Food Regulations*, 13 N.Y.U. Envtl. L. J. 379, 379 (2005).

161 Fromartz, *supra* n. 10, at 240.

162 7 U.S.C. § 6501.

mental health.[163] For some, "[b]uying and consuming organic food has come to be viewed as not only a means of avoiding harm, but as a benefit in itself—a personal way of aligning nutrition, health, and social and environmental well-being."[164]

Many consumers expect that organic milk is produced by small family farmers who believe in the philosophy of organic agriculture—namely "higher ethical standard[s]."[165] "Consumers don't just taste food, they experience it, and by knowing that a product came from a food system that treats farmers well may well enhance its flavor."[166] Although organic farms include small family farms, the regulations have no meaning beyond outlining a process of production for farmers to follow.[167] For many big dairies, organic is not a "way of life," but a marketing tool.[168] Therefore, consumers often do not get what they expect. This is unfortunate considering that one of OFPA's express purposes is to "assure consumers that organically produced products meet a consistent standard."[169] When consumers stop buying products because they lose faith in the organic label, it threatens the credibility of USDA's organic program. Because OFPA's express purposes include assuring consumers of standards and facilitating commerce, the substance of consumer perceptions and expectations should be recognized in the regulations.

2. *Farmers: Factory Farms v. Family Farms*

The organic ideal was rooted in a "Jeffersonian vision of a small family farmer eking out a modest, independent living through honest toil" and "[t]he organic marketplace made that ideal viable because consumers were willing to pay a premium for the products these small farmers grew."[170] However, with the growing demands for organics, dairy farms of all sizes are transitioning into organic production.[171] As a result, smaller farms are less able to compete with the larger farms

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163 Fromartz, *supra* n. 10, at 6 (asserting that "organic pioneers" wanted to progress without sacrificing the health or well being of humans, animals, or the environment).

164 *Id.* at 5.

165 Jordan, *supra* n. 5.

166 Fromartz, *supra* n. 10 at 6 (citing William Lockeretz & Kathleen Merrigan, *Selling to the Eco-conscious Food Shopper*, Nutrition Today 40, no.1 (January/February 2005)) (internal quotations omitted).

167 *See e.g.* Ness, *supra* n. 86 (expressing how certain acts may not "violate the letter of the law, but certainly violate the spirit").

168 *See e.g.* Damien Cave, *Now, She's 'Organic' (That's A Plus)*, N.Y. Times Week in Review 5 (Aug. 1, 2004) (asserting that the term "organic" is now used to market everything from peanuts to people).

169 7 U.S.C. § 6501(2).

170 Samuel Fromartz, *Small Organic Farmers Pull Up Stakes*, N.Y. Times A1 (Oct. 14, 2002); *see* 136 Cong. Rec. H6535 (daily ed. Aug. 1, 1990) (statement of Congressman Peter DeFazio: "Family farmers will benefit; organic production is a godsend for smaller acreage, high-value crops").

171 *See e.g. Naturally*, N.Y. Times Mag. 8 (June 24, 2001) (detailing how Horizon Organic aided 125 farms in converting to organic).

that use more efficient, industrial methods, which allow them to sell milk at a lower price.[172] This is because larger farms usually house thousands of confined cows that eat a "high-caloric grain diet and don't walk far . . . [so] they can devote much more energy to producing milk."[173]

Some contend that a "core value of the organic industry is to support family farms."[174] If the USDA continues to allow large farms to take advantage of the vague regulations, small farms that graze their cows are at a tremendous disadvantage. As retailers such as Wal-Mart sell more organics, large industrialized farms will likely squeeze smaller farmers out of the marketplace.[175]

One producer, Eden Farms, contends that small farmers are also at a disadvantage because they adhere to standards even higher and stricter than the USDA standards.[176] Some smaller farmers have begun to opt out of certification because they feel that the USDA seal does not represent the true meaning of organic.[177]

3. *The Environment and Health of Livestock*

According to the USDA, organic agriculture emphasizes "the use of renewable resources and the conservation of soil and water to enhance environmental quality for future generations."[178] Indeed, the rules define "pasture" as "land used for livestock grazing that is managed to provide feed value and maintain or improve soil, water and vegetative sources."[179] In addition, the rules also recognize the importance of the "health and natural behavior of animals."[180] While organic dairies housing thousands of cows may not entirely resemble feedlot operations, the conditions at those farms still present many of the same concerns as factory-like farms.

First, farms that resemble feedlot operations create environmental problems, including water and air pollution and increased green-

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172 *See* Warner, *supra* n. 116 (noting the positions of several organic advocacy groups).

173 *See* Fromartz, *supra* n. 10, at 220 (noting the disparate approaches in farming when comparing CAFOs and pasture based farms).

174 Martin, *supra* n. 30.

175 Warner, *supra* n. 16.

176 *See e.g.* Eden Foods, *Why Eden Foods Chooses Not to Use the USDA Organic Seal* (June 19, 2006), http://www.organicconsumers.org/articles/article_1012.cfm (describing how the company believes the USDA seal does not represent its ideals of organic, and how the company adheres to higher principles).

177 *See id.* (asserting that "food bearing the 'USDA Organic' seal no longer needs to be natural food" and therefore the company will not "add a symbol to this food that essentially cheapens it").

178 USDA, *Organic Food Standards and Labels: The Facts*, http://www.ams.usda.gov/nop/Consumers/brochure.html (original site no longer available) (on file with *Animal L.*) (available at http://www.gulfblend.org/poc/view_doc.php?type=doc&id=9679&cn=281).

179 7 C.F.R. § 205.2 (2006).

180 7 C.F.R. § 205.239(a).

house gases.[181] Second, large confinement dairies consume more fuel than smaller farms that allow the animals to graze because of the fuel required to produce and transport the grain to feed the confined animals and the energy required to monitor them.[182] Additionally, the large amounts of manure produced in farms housing thousands of cows often cannot be absorbed by the soil and, if not managed correctly, can contaminate streams and groundwater.[183] In contrast, the environmental benefits of "carefully managed grazing systems utilizing permanent pastures are potentially significant."[184] One set of analyses has predicted that the implementation of pasture-based systems would greatly reduce emissions of greenhouse gases, decrease soil erosion and fuel use, and improve water quality.[185] Considering the broader debate raging today about energy conservation and its impact on the environment, this facet of the issue should be evaluated in the development of organic standards. Scientific data supporting the environmental benefits of pasture-based systems is critically important in developing well-rounded and precise regulations.

Moreover, there is a significant disparity between the health and nutrition of cows fed a diet including pasture and those fed a diet based on grains and corn. Pasture-based systems are healthier for animals and result in more nutritious milk.[186] "Cows are ruminant animals that naturally eat grass and forage."[187] Grain and corn-based diets contribute to increased illness and health problems in livestock.[188] "If the grain rations contain too little fiber . . . the cow can suffer from a condition of high acidity in the first of the cow's four stomachs."[189] This condition is known as "a silent thief" because it can

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181 Clancy, *supra* n. 97, at 10–12 (outlining some of the main environmental pitfalls of CAFOs as: air pollution; manure-related odors; emission of greenhouse gases; and excessive energy use).

182 *Id.* at 13.

183 *Id.* at 10–11 (describing manure pollution of water as a cause of fish death, contaminated wells, higher levels of disease-causing micro-organisms, and reduced biodiversity in the aquatic ecosystems).

184 *Id.* at 14.

185 *Id.* (citing G. Boody, *Multifunctional Agriculture in the United States*, 55 Bioscience 1, 27–38 (2005)). This study also demonstrated the benefits of carbon sequestration, decreased loss of soil nutrients, and decreased sediment in waterways. *Id.*

186 *See* Clancy, *supra* n. 97, at 12 (citing one specialist who observed that pasture-based feeding appeared to increase the number of years a dairy cow produces milk and examining data that suggest milk from pasture-raised cows is higher in beneficial fatty acids than milk from confined cows); *see also* Fromartz, *supra* n. 10, at 221–22 (referencing a "2004 study by the Danish Institute of Agricultural Sciences [that] found that organic milk from pastured cows had 50 percent more vitamin E, 75 percent more beta-carotene (vitamin A), and two to three times more antioxidants than conventional milk. . . .").

187 Clancy, *supra* n. 97, at 13.

188 *Id.* Illnesses include ulcers and virulent strains of E. coli in the digestive tract. *Id.* In addition, the increase in illnesses also leads to increased uses of antibiotics in cows, which may further lead to cows' antibiotic resistance. *Id.*

189 Fromartz, *supra* n. 10, at 220–21.

lead to many other diseases.[190] Additionally, though cows are generally strong and sturdy animals, they tend to feel more stress and routinely become more ill when confined in small spaces.[191] For example, "[confined] animals . . . face risk of udder infections, such as mastitis, and lameness from walking on concrete."[192]

Aside from the cows' welfare and nutrition, grass-fed animals also produce milk that is more beneficial to human health. Milk from grass-fed animals is more nutritious[193] in that it is lower in fat and higher in biologically-active fatty acids than dairy products from confined animals.[194] These beneficial fatty acids have been shown to help reduce the risk of coronary heart disease and the incidence of fatal heart attacks," and have positive effects on diabetes and body composition, but "[d]isappointingly, most of these positive effects have not been duplicated in human studies."[195] In general, these health benefits are realized when the low-starch, high-fiber plants found in pastures replace high-starch, low-fiber grains in confined dairy cows' diets.[196]

The NOP regulations established a pasture-based system, taking into account the importance of "the health and natural behavior of animals . . . ."[197] Although the NOP regulations do not explicitly account for the nutrition of organic foods for human health, per the OFPA, the NOP is "to assure consumers that organically produced products meet a consistent standard."[198] Because milk from pastured animals is much more nutritious than milk from grain-fed cows, the regulations should more explicitly recognize the importance of a pasture-based diet and aim to ensure more consistency in organic practices, and thus, in the overall quality of organic products.

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190 *Id.*

191 Clancy, *supra* n. 97, at 12.

192 Fromartz, *supra* n. 10, at 220.

193 Clancy, *supra* n. 97, at 15 (examining data that suggest milk from pasture-raised cows is higher in beneficial fatty acids than milk from confined cows); *see also* Fromartz, *supra* n. 10, at 221–22 (referencing a "2004 study by the Danish Institute of Agricultural Sciences [that] found that organic milk from pastured cows had 50 percent more vitamin E, 75 percent more betacarotene (vitamin A), and two to three times more antioxidants than conventional milk. . . .").

194 Clancy, *supra* n. 97, at 40–42 (describing studies that showed milk from pasture-raised cows to have higher percentages of alpha-linolenic acid (ALA) and conjugated linoleic acid (CLA) than milk from confined cows, and lower levels of saturated fat).

195 *Id.* at 24–25 (discussing the effects of ALA and CLA on human health).

196 *See id.* at 15 ("Many of these grasses and other plants [in pastures] contain high levels of alpha-linolenic and other fatty acids, which bacteria help convert into beneficial fatty acids in cows' stomachs. These beneficial fatty acids eventually find their way into milk. . . .").

197 7 C.F.R. § 205.239.

198 7 U.S.C. § 6501(2).

C. Negative Impact of Stricter Regulations

1. Impact of Stricter Rules on Farmers

The proposed number of minimum grazing days and pasture intake recommended by the NOSB likely would lead to the decertification of many farms.[199] Minimums are "not necessarily . . . applicable or suitable for all areas of the United States, because they meet [only] a particular climate and topography, namely a homogeneous climate with respect to growing season, precipitation, and vegetation."[200] A strict pasturing requirement may favor smaller producers because it is harder to graze large herds and get the cows back to the barn to be milked multiple times a day. The larger the herd, the more acres of pasture needed. Because of rotational grazing, "the cows have to walk a long way from the [barn] to fresh grass," thereby using more energy and producing less milk.[201]

Another complicated issue with the NOSB guidance would be the "difficulty for both producers and certifying agents in measuring and verifying the minimums for feed derived from pasture for a single cow or an entire herd, because of multiple variables that change constantly over time."[202] A critical question is how a producer should calculate the "minimum specified for each dairy cow at any particular point in time in order to avoid risk of losing their organic certification."[203] Finally, there is the difficult issue of enforcement. One commenter suggested that farmers that want to avoid the pasture requirement would likely find a way to avoid the standard.[204] "[T]he issue is enforcement, not the regulations."[205]

2. Impact on Consumers, the Environment, and Animals

If the minimums lead to the decertification of many organic dairy farms, consumers and the environment may actually be harmed, rather than benefit. No matter the level of compliance with regulations, people may still prefer organic milk to conventional milk be-

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199 *See* 71 Fed. Reg. at 19133 (noting comments from the public that did not support the NOSB guidance of minimum pasture time).

200 *Id.* In addition, the farms that would not be able to meet the requirements are not necessarily all big farmers. *Id.* "One certifying agent said that at least half of their responding livestock operations, most with fewer than 50 dairy cows, would not be able to meet the guidance criteria put forth by the NOSB despite meeting all other NOP requirements." *Id.*

201 *See* Fromartz, *supra* n. 10, at 223 (describing one farmer who tried to follow the confinement dairy model but felt like he was "fighting [against] the natural system" of grazing).

202 71 Fed. Reg. at 19133. "Such variables include: factors affecting the animals themselves—age of the animals, nutritional needs in relation to reproductive cycle, body condition, etc; and factors affecting the quality of the pasture—precipitation, animal-units per acre, species of grasses, sunlight, temperature, etc." *Id.*

203 *Id.*

204 *Id.*

205 *Id.*

cause farmers produce it without the use of hormones and unnecessary antibiotics.[206] The decertification of farms would lead to an even greater shortage of organic milk, increasing the current challenges of meeting organic milk demands.[207] Aurora Organic Dairy asserts that its farm makes "organic goodness affordable."[208] Some also argue that "while supporting family farms is important, so too is converting as much land as possible to organic."[209] As for animal health, some farmers assert that making pasture the dominant portion of a cow's diet may actually distort balanced nutrition.[210]

IV. RECOMMENDATIONS

A. *The Possibility of Alternative Labeling*

If the USDA does not adopt NOSB's proposed minimum requirements because of their possible negative effects, an alternate labeling regime is one possible solution to the lack of pasture issue. For example, producers may opt to put "grass fed" labels on their products.[211] Alternatively, farmers may opt to label products as "grown locally by family farmers."[212] The NOP rules forbid certification agencies from "requiring compliance with any production or handling practices other than those provided for," thereby preventing the use of stricter standards.[213] However, the rules do not prohibit producers from making

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206 *See e.g.* Marian Burros, *Survey Ranks "Organic-ness" at Dairies*, N.Y. Times F8 (Mar. 22, 2006) (quoting Mark Kastel, a founder of Cornucopia Institute, as stating that "[i]f you are worried about things like bovine growth hormone in your milk, organic is still better than conventional milk").

207 *See e.g.* Michael Pollan, *The Way We Live Now: Mass Natural*, N.Y. Times C1 (June 4, 2006) (opining that in order to sell food cheaply, one must plan "to bring business-as-usual principles of industrial 'efficiency' and 'economies of scale' to a system of food production that was supposed to mimic the logic of natural systems rather than that of the factory").

208 *See* Fromartz, *supra* n. 10, at 227 (exploring the perspective of lower prices being beneficial to the organic market).

209 Martin, *supra* n. 30.

210 71 Fed. Reg. at 19132 (discussing some public comments about how a pasture-based system is nutritionally unbalanced for cows because pasture should comprise only one component of cows' nutrition); *see also* USDA, *National Organic Standards Board Symposium* 53–54 (Apr.18, 2006) (available at http://www.ams.usda.gov/AMSv1.0/fetfile?dDocName=STELDEV3104056) (discussing one panelist's position that purely pasturing cows may create a lack of fiber in cows' nutrition because of the low fiber content of some forages; and such practices may create a distorted carbohydrate to protein ratio because of the high content of protein in some grasses). The panelist, Jim Cropper, is a 4-H management specialist at the Natural Resources Conservation Service and the East Technical Center in Greensboro, North Carolina. *Id.* at 46–47.

211 *See e.g.* Nina Planck, *Organic and Then Some*, N.Y. Times A3 (Nov. 23, 2005) (asserting that "grass fed" means a lot more than organic and "[i]f the organic label loses its meaning, farmers with higher standards will have to devise new ones. The next generation of labels will say 'grass fed' butter . . .").

212 Fromartz, *supra* n. 10, at 71 ("[A] survey of 1,500 people . . . reported that more than 75 percent would choose food labeled 'grown locally by family farmers' as their first choice for produce or meat.").

213 7 C.F.R. § 205.501(b)(2) (2007).

additional claims as long as they are truthful and not misleading.[214] In addition, the regulations allow private certification agencies to employ stricter standards for private certification labels.[215] The challenge with these labels would be establishing credibility and avoiding consumer confusion. However, with the current controversy over organic factory farms, private certification may open the door for farmers to try a new labeling regime.

Grass Point Farms, a company that produces "all-natural" milk, provides a good example of alternative labeling.[216] Grass Point's milk costs less than USDA organic certified milk, but Grass Point still produces the milk without the use of hormones.[217] The company claims that "the absence of an organic label probably [would not] deter consumers who understand that grass-fed generally translates to a more natural offering than conventional products."[218] Grass Point hopes that "[t]he promise of new supply at a lower price point may appeal to both consumers and retailers."[219] Ultimately, however, the credibility and success of an alternate labeling regime may depend on the ability of consumers to understand the difference between the reasons they buy organic and the purposes behind the NOP regulations and also their ability to understand how those differences are reflected in the alternate labeling. As discussed above, many consumers are readily mislead by the organic seal and alternative labels would likely only appeal to a small niche in the market.

B. State Certification Programs or Regional Regulations

One of the biggest challenges of NOSB's guidance requiring minimum grazing days and pasture intake is how inflexible it is for different climates and ecological environments. Though Congress designed OFPA to be the most stringent of existing state organic regulations in 1990, it still provided for the possibility of separate state organic regu-

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214 7 C.F.R. § 205.405(g) (2007) (stating that a certifying agent may deny certification if he "has reason to believe that an applicant for certification has willfully made a false statement or otherwise purposefully misrepresented the applicant's operation or its compliance with the certification requirements").

215 7 C.F.R. § 205.501(b)(2) (clarifying that "certifying agents certifying production or handling operations within a State with more restrictive requirements . . . shall require compliance with such requirements as a condition of use of their identifying mark by such operations").

216 *See* Meyer, *supra* n. 3 ("Grass Point farmers do not use antibiotics on a regular basis but . . . use them as needed to treat a sick cow. The cow is pulled from the herd temporarily while under treatment, and then allowed to return once the antibiotics are out of its system."). Under the NOP regulations, cows treated with antibiotics must be pulled out for an entire year, and many dairy farmers simply remove them permanently from the herd. *Id.*

217 *Id.* ("The milk is free of growth hormones, but costs less than certified organic milk.").

218 *Id.*

219 *Id.*

lations.[220] OFPA and the NOP regulations allow for state certification programs as long as they are as strict as the national ones.[221] One possible solution would be for the states to determine appropriate pasture requirements according to their respective regions.[222] However, a state that has the climate and ecology to support more grazing has little motivation to establish stricter standards when doing so would likely hurt that state's farmers in the marketplace. Establishing stricter standards likely means raising the costs of milk production for organic dairy farmers. Accordingly, their milk, priced higher because of increased costs, is not as competitive in the marketplace.

Alternatively, the federal regulations could account for regional differences by establishing standards according to climate and ecology.[223] Again, the problem with establishing regional guidelines is that it would favor farmers who, by virtue of climate and geography, are not required to allow as much pasture time. As discussed above, confined cows are able to expend more energy producing milk, which maximizes production and reduces the selling prices.[224] One of OFPA's goals is to "facilitate interstate commerce," not hinder it.[225] Therefore, this solution would not likely garner support from farmers around the country.

C. Consumer Education—Let the Market Handle It!

Many customers feel that the "organic factory farms" are taking advantage of loopholes in the current pasture regulations. However, with significant media coverage and surveys such as those sponsored by the Cornucopia Institute that ranked the "organic-ness" of dairies, many consumers have taken matters into their own hands.[226] As discussed above, many consumers would not purchase organic milk if

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220 7 U.S.C. § 6503(b).

221 7 C.F.R. § 205.501(b)(2) (outlining that a state certification program could have stricter standards than the NOP rules).

222 *See e.g.* Martin, *supra* n. 30 (explaining that "farmers in areas with plenty of rainfall, such as Wisconsin, could be allowed more cows per acre than those in drier areas like Colorado, simply because there is more grass to eat").

223 For example, in the international arena, the International Federation of Organic Agriculture Movements (IFOAM) has developed organic standards as guidelines for organic accreditation programs around the world, has developed a program called the "IFOAM Family of Standards." IFOAM, *The IFOAM Family of Standards*, http://www.ifoam.org/about_ifoam/standards/family_of_standards/family_of_standards.html (accessed Apr. 13, 2008). This program is dedicated to recognizing the need for accommodating regional differences in the development of organic standards. *Id.* "The differences might be of for example ecological, climatic, cultural, traditional, technical, or cultural nature." *Id.* Under this mechanism, applicants can "apply for approval of their regional or national certification standard." *Id.*

224 *See* Fromartz, *supra* n. 10, at 221 (identifying a veterinarian who said, "[t]he main paradigm is to get every last drop of milk out of the animals by taking them off the land").

225 7 U.S.C. § 6501(3).

226 *See* Kastel, *supra* n. 12, at 22 (discussing the Cornucopia Institute Survey that analyzed organic milk labels based on common consumer perceptions); *see also* Jordan,

they knew that organic cows were confined and not grazed on pasture. This may encourage those companies to change their practices and adhere to higher organic standards for the sake of their businesses. For example, some of the largest organic dairy companies, including Horizon Organic and Aurora Organic Dairy, recently wrote a letter to the Secretary of Agriculture supporting a final rule that "optimizes the role of pasture in all organic dairy operations."[227] Despite this revelation, however, a change in the rules will likely take years. Consumer education and the use of market mechanisms would likely be the most powerful approach to effect change in this area. Historically, there have always been numerous impediments toward making significant changes in organic regulations.[228] Using informational regulation seems like the most viable alternative to provide farmers, consumers, and advocates with a fulfilling solution. Ultimately, a strict interpretation of the NOP regulations focusing on the natural treatment of livestock is the only interpretation consistent with OFPA regulations. A meaningful, measurable and verifiable standard of pasture for organic dairy cows must be enforced in order to uphold the integrity and efficacy of the National Organic Program.

V. CONCLUSION

Organic milk is more popular than ever, and more and more retailers are venturing into the organics business. Therefore, it is more important than ever that the National Organic Program provide clear rules to produce consistent standards. Currently, the "access to pasture" rules for organic cows are too vague to allow for consistency. If the USDA does not clarify these rules, it is likely that consumers will lose confidence in organics, rendering the label meaningless.

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supra n. 5 (noting the boycott of the Organic Consumers Association against Horizon Organic).

227 Ltr. from George Siemon, CROPP Cooperative, Organic Valley, Nancy Hirshbirg, Stonyfield Farm, Inc., Kelly Shea, Horizon Organic, Rich Ghilarducci, Humboldt Creamery, Mark Retzloff, Aurora Organic Dairy, to M. Johanns, Sec., USDA (Oct. 26, 2006) (available at http://www.organicconsumers.org/artman2/uploads/1/Processors_Alliance_FINAL_Letter.pdf).

228 *See supra* Pt. I, Sections B, C & D (discussing the reluctance of Congress and the USDA to implement regulations that would have a drastic financial impact on the organic market).