



July 12, 2021

Jennifer Tucker, Ph.D.
Deputy Administrator, National Organic Program
USDA-AMS-NOP
1400 Independence Ave., SW, Room 2642-So., Ag Stop 0268
Washington, DC 20250-0268
RE: Docket Number: AMS-NOP-11-0009; NOP-21-04PR
Regulatory Information Number (RIN): 0581-AD89

Dear Dr. Tucker:

The Ohio Ecological Food and Farm Association (OEFFA) is a grassroots coalition of more than 4200 farmers, gardeners, retailers, educators, and others who since 1979 have worked to build a healthy food system that brings prosperity to family farmers, safeguards the environment, and provides safe, local food. Certified organic farmers make up the bulk of our membership, as well as the bulk of our policy steering committee. OEFFA's Certification program has been in operation since 1981. OEFFA certifies nearly 1,200 organic producers and food processors, in a twelve-state region, ensuring that these operations meet the standards established for organic products, and collaborating with partners such as the Accredited Certifiers Association (ACA) and International Organic Inspectors Association (IOIA) to foster consistency and clarity both in the way we conduct ourselves, and in what we expect from producers and handlers we certify, as well as from our colleagues at the NOP and NOSB. We are members of the National Organic Coalition (NOC) and participated in drafting NOC's comments on the Origin of Livestock Proposed Rule with them and generally, support those comments as well. We also received and incorporated into our comments input from several long-time organic dairy farmers and organic inspectors.

OEFFA employs education, advocacy, and grassroots organizing to promote local and organic foods, helping farmers and eaters connect to build a sustainable food system. We work collaboratively with groups such as the Organic Farmers Association, NOC, and the National Sustainable Agriculture Coalition to effect positive food systems change. We have heard from many of our members and certified operations over the years that they desire stronger enforcement of organic standards, consistency of interpretation, and prevention of organic fraud and we work hard as a certifier toward those aims. We are excited that the Origin of Livestock rule, which closes a devastating loophole in the organic dairy industry, is moving forward. This rule has broad support from both the organic industry and the wider community of consumers interested in organic practices.

We respectfully offer the following comments on the Origin of Livestock Proposed Rule (OoL):

CONTENTS

RESPONSES TO QUESTIONS POSED BY AMS	3
Whether the Final Rule should prohibit certified organic dairy operations from acquiring transitioned animals.....	3
Whether AMS should use the term “operation” to describe the regulated entity.....	4
Implementation Timeframe	5
Regulatory Impact Analysis	5
Exceptions to the one-time allowance requirement.....	5
PROPOSED CHANGES TO REGULATORY LANGUAGE	6
ADDITIONAL TOPICS	7
Regulatory Choices	7

RESPONSES TO QUESTIONS POSED BY AMS

WHETHER THE FINAL RULE SHOULD PROHIBIT CERTIFIED ORGANIC DAIRY OPERATIONS FROM ACQUIRING TRANSITIONED ANIMALS

We agree with AMS that there are some circumstances where it seems reasonable for transitioned animals to be sold as organic. A farm may be sold to a younger family member when the elder owner retires. One dairy farmer may buy a neighboring dairy farm, including animals, after the neighbor quits the industry. Or animals from a dairy that is closing may be auctioned off to several other farms. However, OEFFA, and the dairy farmers **we** consulted, **do not believe it is necessary or appropriate to provide exceptions in the rule that would allow the organic sale or transfer of transitioned animals.**

First, most animals sold by dairy farms to other dairy farms (ignoring, for the moment, heifer growers) are organic from the last third of gestation as a simple result of the life cycle of a dairy animal. With an average lifespan of 4.5 to 6 years¹, the majority of dairy animals sold to another dairy farm are born after the average organic dairy got certified² and are organic from the last third of gestation. Dairies certified in the last 3 years can be expected to have a higher proportion of their milking herd that went through transition whereas dairies that completed their transition five or more years ago can be expected to have few, if any, transitioned cows still on-site.

So, of the reasonable circumstances for sale of dairy animals to another dairy farm for milking, it is relatively rare that those animals went through a transition (or will be rare, once the loophole allowing continuous transition is closed). **Neither OEFFA nor the farmers we talked to believe it possible to clearly articulate all reasonable exceptions in a rule.** Some reasonable exceptions inevitably would be left out, and it is likely that any attempt to list exceptions would open new loopholes.

This is a nuanced topic, and we asked certified dairy farmers how the rule would affect their operation. We heard that it is convenient to buy transitioned animals but that farmers are not worried about being able to grow their operation or replace animals in their herd if they can only buy animals that are organic from the last third of gestation. We heard that it's nice to get a slightly higher price when transitioned animals are sold, compared to the price for animals sold as conventional, but that this is not

¹ animal, Volume 14, Issue S1: XIIIth International Symposium on Ruminant Physiology (ISRP 2019), 3-6 September 2019, Leipzig, Germany, March 2020, pp. s155 - s164

² We found 3303 certified organic dairies in the Organic Integrity Database on 5/26/2021 (Livestock scope Certified with "dairy" or "milk" in products list and "cows" or "cattle"). Of these, 2908 (88%) had an NOP Effective Date for Livestock scope of 2018 or earlier, 2601 (78.7%) had an effective date of 2017 or earlier, and 2165 (65.5%) had an effective date of 2016 or earlier.

their primary source of income (milk is) and selling their remaining transitioned animals at a lower price would not significantly affect their bottom line. They thought a prohibition on sale would motivate farmers to manage animals organically as long as possible and that it is most “authentic” to sell only slaughter-eligible animals as “organic.” Some farmers said that they strongly support a prohibition on sale or transfer of transitioned animals, which they see as the only guaranteed way to close the continuous transition loophole and reward farmers for managing animals organically. Farmers who began by thinking of reasonable situations for sale of transitioned animals tended to end the conversation by saying that prohibiting the sale of transitioned animals as organic would be a small price to pay for the sake of closing a devastating loophole. Some pointed out that lower prices for sale of transitioned animals would be outweighed or at least balanced by being able to sell organic (not transitioned) calves and heifers for a premium that more accurately reflects the cost of production.

Finally, prohibiting transitioned animals from being sold or transferred for milking at another dairy farm is the only sure way to prevent individuals responsibly connected to an existing operation from starting a series of new independent businesses for the sake of transitioning additional herds. It will not prevent responsibly connected individuals from starting their own dairy farm and milking their own transitioned cattle someday.

A clear and consistent prohibition on sale or transfer of transitioned animals for milking at another operation is the best way to ensure that transition is used as it was originally intended – once, by a brand-new organic dairy farm, over the course of no more than 12 months.

WHETHER AMS SHOULD USE THE TERM “OPERATION” TO DESCRIBE THE REGULATED ENTITY

The term “producer” is used throughout the organic regulations to describe management and recordkeeping practices the person or business engaging in organic production must use. This is not commonly a source of confusion, as both organic operators and certifiers understand that the focus of these rules is on the practices themselves rather than the entity engaging in them. However, the term “producer” leaves room for interpretation that the term “dairy operation” does not. A business entity (certified or transitioning operation) may own or operate two separate locations, a heifer grower/raiser and a milking dairy, that do not have any functional relationship with each other (where animals raised at the former are not consistently milked as adults at the latter), both of which could be considered a “producer.” It is much clearer for certifiers to consider eligibility of an entire certified operation for transition than any potentially smaller production units considered “producers.” Additionally, regulating at the “operation” level will help clarify that an individual who was responsibly connected to an operation that transitioned a herd would still be eligible to transition a herd (once, over 12 months) at an entirely new operation, while preventing operations from contracting with farms to transition additional animals on their behalf. This is important for beginning farmers who may help manage herds at existing dairies before starting their own farm. **For consistency and clarity, it would be preferable for**

AMS to replace the word “producer” throughout the proposed rule with “dairy operation” so that it is clear the regulated entity (certified dairy operation) is the appropriate level for considering compliance with livestock origin requirements. If transitioned animals cannot be sold as organic, the replacement of “producer” with “dairy operation” will help **to close the loophole for continuous transition.**

IMPLEMENTATION TIMEFRAME

We are pleased that AMS is proposing to make the Origin of Livestock rule effective upon publication of the final version, as this regulation is long overdue. It is imperative that AMS word its implementation requirements carefully so that OSPs (Organic Systems Plans) that include continuous transition, which are currently approved by some certifiers, will not be grandfathered in. **A 12-month period from the effective date to a full-compliance date is adequate for animals in the middle of an approved transition to complete the transition and produce organic milk.** After those 12 months, all animals transitioned to organic must meet the new requirement – no more than one 12-month transition for a new organic dairy. This will allow legitimate one-time herd transitions to begin anytime as long as they end strictly 12 months later and all animals are fully organic (last third of gestation) from then on. It will prevent operations that currently continuously transition animals (under an OSP approved by their certifier) from doing any more transitioning after the end of the 12 months from the rule date. Those operations will have to change their OSPs to be compliant with the rule for all animals not already in the midst of transition. **The final rule should be effective immediately upon publication and all previously approved transitions must be completed no more than 12 months from the effective date.**

REGULATORY IMPACT ANALYSIS

We agree with AMS’s logic that implementing the Origin of Livestock Proposed Rule will not have a significant effect on consumer milk prices but will positively affect the livelihoods of dairy farmers. Much damage has already been done to the organic dairy industry by many years with an increasing influx of milk from animals that were transitioned by a farm that transitioned multiple herds or continuously transitioned animals. Closing this loophole as fast and thoroughly as possible is the best thing we can do to support the livelihood of dairy farmers whose practices comply with the intent of the rule.

EXCEPTIONS TO THE ONE-TIME ALLOWANCE REQUIREMENT

OEFFA supports allowing an additional transition to an operation which loses certification of its herd due to Federal or State emergency pest or disease treatment or which is subject to a Temporary Variance under §205.290.

PROPOSED CHANGES TO REGULATORY LANGUAGE

To ensure that transitioned animals are used as intended – for milking on the dairy farm where they transitioned – we propose making the following edits to the text from the 2015 Proposed Rule:

§205.236(a)(2)(viii) After the 12-month period ends, transitioned animals may produce organic milk ~~on any for the organic dairy farm where they transitioned as long as the animal is under continuous organic management at all times on a certified organic operation~~; and

§205.236(a)(2)(ix) After the 12-month period ends, any new dairy animal brought onto a ~~producer's certified organic~~ dairy farm(s) for organic milk production must be an animal under continuous organic management from the last third of gestation. ~~or a transitioned animal sourced from another certified organic dairy farm.~~

To clarify that the regulated entity is the transitioning or certified operation, we propose the following additional edits to the 2015 Proposed Rule:

§205.2

Dairy operation. An operation that is certified for or is applying for certification of organic milk-producing livestock and production of organic milk or milk products.

§205.236(a)(2) *Dairy animals.* A ~~producer~~ dairy operation as defined in §205.2 may transition dairy animals into organic production only once. A ~~producer~~ dairy operation is eligible for this transition only if the ~~producer~~ dairy operation starts a new organic dairy farm or converts an existing organic dairy farm to organic production. A ~~producer~~ dairy operation must not...

(ii) During the 12-month period, the ~~producer~~ dairy operation should describe...

(ix) After the 12-month period ends, any new dairy animal brought onto a ~~producer's~~ dairy operation's dairy farm(s)...

We think leaving “producer” in §205.236(c) will not be a source of confusion, as it mirrors other uses of “producer” in the crop and livestock production standards.

ADDITIONAL TOPICS

REGULATORY CHOICES

We are heartened that the Origin of Livestock proposed rule is live again and look forward also to the Strengthening Organic Enforcement proposed rule moving forward as well. The Organic Livestock and Poultry Practices (OLPP) proposed rule also had broad support from both the organic industry and the wider community of consumers interested in organic practices but has not been implemented. We encourage AMS to take up OLPP again. We must move forward on all three fronts to maintain integrity in the program and to continue to move the organic industry forward.

On behalf of the Ohio Ecological Food and Farm Association and OEFFA Certification,

Amalie Lipstreu

Amalie Lipstreu
Policy Director