



July 12, 2021

Dr. Jennifer Tucker  
Deputy Administrator  
National Organic Program  
USDA-AMS-NOP  
1400 Independence Avenue, SW  
Room 2642-S., Stop 0268

RE: Origin of Livestock Proposed Rule;

Docket Number: AMS-NOP-11-0009; Docket RIN 0581-AD89

Dear Dr. Tucker,

In a nearly two-decade time period, producers from the Western Organic Dairy Producers Alliance (WODPA) have worked to reach a Final Rule on Origin of Livestock (OOL). The organic dairy industry, as well as much of the entire organic community, has twice commented since 2015 and supported the need for a Final Rule on OOL. The organic community relies on the application of fair and consistent standards, no matter the size or scope of production. Our consumers trust in these standards and integrity behind the organic seal when they purchase our products.

Producers who follow the last third of gestation rule have long been harmed financially by the higher costs they pay to raise replacement animals organically. They have also suffered through low pay prices for their milk and the lack of a market for organically raised livestock as a result of the existing loopholes in the regulation. Loopholes have allowed operations to quickly increase the size of their herds through continuous transition practices, bringing greater numbers of animals into organic production and leading to an oversupply of milk. The oversupply conditions in the organic dairy industry will continue to be exacerbated if we do not close this loophole.



The Final Rule has continually been delayed to allow for additional comments and comments from new entrants to the organic dairy community. Each comment period has been met with support for a Final Rule. Ample time and opportunity have been given to all to provide comments on a Final Rule. In addition, the NOP economic data supports the negative impact dairy producers have experienced for years as the result of delaying a Final Rule. All while these delays have continued to reward those utilizing the loopholes.

***We urge you to swiftly finalize and implement a Final Rule.***

Unfortunately, the negative impacts of delaying a Final Rule have led to organic dairies continuously leaving the industry. The costs of production for raising animals organically their entire lives are much higher in comparison to those who have utilized loopholes in the regulation. These costs have continued to outweigh the value of our organic milk with the constant oversupply as those utilizing loopholes brought a greater number of cattle into organic milk production.

Dairies are also facing the lack of a premium being paid for organically raised animals. Prices have been driven down across every aspect of the organic dairy industry, creating a difficult environment for these dairies to remain sustainable. If we hope to encourage others to support the organic community and keep our valued, existing organic dairies, we must ensure all are held to the same standards. These standards must be without room for interpretation, loopholes, or a lack of enforceability.

***To address the questions posed on OOL:***

- **Yes: Prohibit the sale or transfer of any type of transitioned animals to another organic dairy herd. Prohibit the establishment of a new dairy herd via transitioned animals.**
  - ***Animals may not be sold or transferred as certified organic upon the publication date of the Final Rule.***
  - ***A new dairy herd must be established with certified organic livestock.***
  - These animals were part of a “one-time” transition allowance. As such, they should only benefit the original herd transitioned.
  - They must cease to be certified organic once leaving the dairy herd.



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- Transitioned livestock sold for slaughter purposes are not considered to be organic. Therefore, they should not be sold or transferred as organic for any purposes.
  - To allow transitioned animals to transfer to others financially undermines those who raise their animals organically, as intended. Instead, it rewards those who utilize unintended loopholes within the existing organic regulation.
  - As the organic community seeks to eliminate fraudulent activities and strengthen enforcement, it would be counterintuitive to create a new loophole within an Origin of Livestock Final Rule. A loophole would be created without prohibiting the sale or transfer of transitioned animals as organic.
- **The Regulated Entity: Identify the individual(s) transitioning dairy herds to limit the abuse of the one-time transition allowance. Clarify that any “responsibly connected person(s)” must be identified and established as connected to a specific operation, thereby binding the individual(s) to a single one-time transition use.**
    - One-time must mean one-time, no matter the person or operation. Ownership in a transitioned operation shows the use of the transition allowance, without exception. This will limit opportunities to form new LLC’s or operations to unfairly take advantage of transiting additional livestock.
    - Such identification information is commonly provided to other regulatory agencies and is not unrealistic to request for organic certification.
    - Though the term “operation” may be commonly used in USDA Organic Regulations, the organic dairy industry is unlike most other production areas. Organic dairy spans several scopes of regulations, has unique qualities in ownership and structure, requires a high-level of recordkeeping on feed, inputs, pasturing animals, and produces multiple organic products including their offspring, milk, and meat.
    - The Strengthening Organic Enforcement proposal references “the responsibly connected person” regarding noncompliance issues. The same approach should be used within the Final Rule.
    - The existing framework must continually be updated to ensure proper certification standards and oversight as the organic community works to continuously build on and improve its practices.



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- **Immediate implementation of the Final Rule should take place upon its publication.**
  - Exceptions should be made for those dairies actively involved in their transition period under an approved Organic System Plan (OSP) with a certifying agency.
  - All granted exceptions must be accompanied by additional recordkeeping requirements and with livestock having been verified on-site prior to the date of publication.
  - The OSP must include criterion for the lifetime tracking of all transitioned livestock. Transitioned livestock shall continue to be audited by the certifying agency to ensure livestock is not sold or transferred as organic.
  - The allowance for this exception shall expire 12-months from the date of the publication, without exception or temporary variance.
  - Allowing for additional exceptions creates opportunity for abuse.
  - Allowing continual transition with an implementation period rewards those who have already benefitted from loopholes in the existing regulation.
  - Transitioned animals were never meant to be used as a tool to replace animals or rapidly increase herd size.
  - Ample time and notice have been given to all considering the delays in a Final Rule.
  - Temporary variances allowing for re-transition following Federal or State emergency treatments as currently permitted should remain.

### **Additional measures with and comments on a Final Rule:**

#### **Recordkeeping, Animal Identification, Auditing, Verification, Data Collection:**

- Recordkeeping, animal auditing, and verification is essential moving forward.
- Each animal must be fully identifiable with standardized procedures for all herds and certifying agencies.
- If the one-time transition and separation of transitioned animals is to be enforceable, certifiers and dairies must have a well-defined, standardized guidelines for the transition exemption.
- Recordkeeping must be well-defined in the Final Rule to ensure consistency for the lifetime tracking of transitioned animals. This is necessary to ensure animals are not sold, transferred, or utilized for organic beef. Dairies must be held accountable for



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tracking these animals and have documented procedures in their OSP to auditable by certifying agents.

- The auditing practices of these records must be standardized for organic inspectors to further ensure fairness and consistency prevails.
- Animal recordkeeping is essential for organic dairies. To gain an overall understanding of the dairy operation, one must be able to determine the number of animals and the pasture utilized by each class of animals. Not only is this essential to the Final Rule and transitioned animals, but it is an essential component to verifying pasture records, stocking rates, and the overall practices of an organic dairy.
- Data should be collected and properly utilized via reporting to NOP.
- High-risk herds must be identified with methodology that is consistent across all certifying agencies and follow specific NOP guidelines.
- To further support the need for recordkeeping, verification, and auditing, the supporting information showed alarming survey data from the OIG. Three out of the six sampled certifying agents (*who certify the most organic dairy operations in the U.S.*), allowed continuous transitioning. Yet, we have no data to show the actual volume of the animals transitioned.
- Unfortunately, without precise AMS data on how many animals are transitioned, we are unable to determine how significantly dairy producers have been hurt by the delays and lack of a Final Rule.

### **Replacement Animals:**

Though the price of organic replacement animals may increase, it would create a greater market for certified organic, non-transitioned animals. Those who have long utilized continuous transition have financially benefitted from the OOL loopholes for years while those following organic rules as intended have suffered through low prices for their livestock.

Again, dairy producers are voluntarily asking for a stronger regulation. Any impact on the price of replacement animals will also be felt by the very dairies asking for a Final Rule should they seek to purchase replacement animals. The overarching goal is to achieve fairness and consistency for *all* dairies.

As the western United State battles extreme heat, water, and pasture shortages, we have seen dairies reduce their number of milk cows and young stock in an effort to meet pasture requirements and manage feed costs. WODPA producers have felt firsthand the challenging market for selling certified organic livestock. With little to no market for these animals, they



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are sold for less than the cost to raise them. Sale prices are much lower than the NOP estimates and lower than we have experienced in prior years. Combining this with skyrocketing feed prices, increasing input costs, and a low pay price for milk, many dairies are having to make difficult decisions on their farms.

Though comments in 2015 stated heifer supplies were tight, we have consistently been in an oversupply situation with replacement animals. The organic livestock market is overflowing with animals in the West. There is more than sufficient organic dairy livestock for sale of all types and ages.

Comments were made in 2015 urging AMS to "... to consider that operations may need to grow to meet customer demand." However, ***the organic dairy industry cannot base its growth on consumer demand if growth is not achieved with integrity.*** The transition rule is not a tool to meet consumer supply demand and should not be treated as such.

#### **Consumer Effect:**

Consumers support organic dairy products because of the integrity behind the organic seal and the practices it represents. Based on the supporting data, it was calculated that a final rule might increase the retail price of organic milk by 2 to 3 cents. Establishing greater integrity and enforcement behind the integrity of the organic seal only helps to ensure our consumers of organic guidelines being followed. Our loyal consumers are not easily swayed by a 2 to 3 cent difference in milk prices. They are, however, encouraged to purchase organic products as we show our efforts to ensure the quality of our products.

A Final Rule shows our consumers that organic regulations require high production standards. Consumer trust is further built as we continuously improve farm practices and meet the ever-growing expectations of organic products. Without consistent standards for all dairies, we are undermining the integrity of the organic seal.

#### **Increased data collection:**

Based on the NOP information provided, it is apparent that more data is needed to support the organic industry. A lack of data collection does not support NOP's ability to fully analyze the harm and economic disadvantage many producers have suffered from. Not only is this a challenge for a true economic analysis of this regulation, but for others moving forward. Without this information, dairy producers lack the data needed to make informed decisions on



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their dairy. We support an expansion of reporting organic dairy data and increased coordination between USDA agencies.

We need a single standard for the transition of livestock to organic dairy production with no room for interpretation. **We need it now.** Dairy producers have repeatedly provided comments in support of a Final Rule. **We are voluntarily asking for a higher standard for all dairies, including our own.**

A Final Rule must prohibit the sale or transfer of transitioned animals. It must clearly identify the “responsibly connected person(s).” We need immediate implementation. Greater recordkeeping is essential to prevent abuse of the transition allowance. This information must be audited and verified with standardized methods for all certifying agencies. The organic dairy industry needs to expand upon data collection for all in our industry.

We need a Final Rule to ensure all dairies are treated fairly and consistently. With this, we must ensure the Final Rule is enforceable. Clear, concise rules on the one-time transition of conventional livestock to organic production will benefit all dairy producers and certifying agencies, while maintaining the consumer confidence we have built for organic dairy products.

Thank you for your attention to this much-needed Final Rule for the Origin of Livestock. Please consider WODPA as a resource for any questions or further information needed in this rulemaking.

Sincerely,

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