



BEYOND PESTICIDES

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1400 Independence Avenue SW
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Docket ID # AMS-NOP-11-0009; Docket RIN 0581-AD89

Re. Origin of Livestock Rule

These comments are submitted on behalf of Beyond Pesticides. Founded in 1981 as a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to bridge the interests of consumers, farmers and farmworkers, Beyond Pesticides advances improved protections from pesticides and alternative pest management strategies that reduce or eliminate a reliance on pesticides. Our membership and network span the 50 states and the world. We support the comments of the Northeast Organic Dairy Producers Alliance and reiterate many of their comments below. These comments were also produced in consultation with our investigative staff at OrganicEye, with decades of experience involved in monitoring the organic dairy industry.

We all have a stake in growing the organic marketplace by supporting the transition from conventional chemical-intensive practices to clearly defined sustainable and regenerative practices that support family farmers and a production system that confronts the climate crisis, biodiversity decline, and rising public health threats. We do this by supporting transition and then continually improving standards to ensure a robust and healthful organic sector. The issues challenging organic dairy production are a part of the continuous efforts of Beyond Pesticides to ensure organic integrity, while growing the organic market.

When the organic rules first came out, there were no organic animals, so there had to be a way for organic dairies to get started. The National Organic Program (NOP) made an allowance for organic farmers to convert a distinct herd to organic milk production. This enabled farmers to get started in organic dairy, by converting from their existing herds. Over the years some industrial-scale operations have used a lack of specificity in the rule to continually transition conventional animals for replacement or expansion purposes. This undercuts dairy farmers who operate with integrity and threatens consumers who depend on the wholesomeness of organic milk.

For nearly two decades, organic dairy producers have suffered economic harm and the NOP organic seal has had its integrity questioned by certifiers, consumers, and Inspector Generals as the agency has failed to reach a Final Rule on the issue of transitioning non-organically certified dairy bovine animals to organic production. As the organic dairy industry has grown, the inconsistency of implementing this exception has increased but compromise solutions to passing a Final Rule with the support of the organic community have found greater acceptance. There is only one way to close all the loopholes—by prohibiting organic certification of conventional livestock. Allowing farmers to convert a single “distinct” heard of animals, one-time and one-time only, to organic production has always been part of the standards. However, the intent of the law has been abused by industrial-scale dairies converting additional animals, for replacement or expansion purposes, on an ongoing basis. This has given “factory farms” an unfair competitive advantage in the marketplace.

NOP believes that it can enforce a one-time exemption that “maintains market stability while simultaneously preserving the value of the organic label,” but we agree with the dairy producers that NOP's analysis is biased toward the processors, marketers, and retailers. We are not sure that USDA and certifiers have the will to take the aggressive approach that is necessary to make the proposed compromise work to protect organic milk consumers and dairy producers. The final origin of livestock rule has to be tough enough to compel certifiers and operators to comply with its intent.

Currently, some certifiers are allowing large dairy operations to purchase yearling heifers (year-old replacement animals) and then convert them to organics during their second year of life prior to giving birth and “freshening” (milking for the first time). This places ethical family scale farmers at a disadvantage, since they manage their heifer calves, from birth, without antibiotics and with all-organic diets starting with organic milk and including all certified organic feed, after weaning for the full first two years of life.

NOP requests input on two major issues and several minor issues. Our comments are below.

Should the final rule should prohibit organic dairy operations from acquiring transitioned animals to expand or replace animals to produce organic milk?

Yes, transitioned animals can only produce organic milk on the operation on which they were transitioned. Transitioned animals must lose their organic dairy status if they are sold, transferred, given, moved to another operation, or they are included as part of a merger of their certified entity with other organic livestock where ownership remains with the original certified entity, but there is common management of many different certified entities.

Allowing transitioned animals to be sold as certified organic creates a loophole that is guaranteed to be exploited. Transitioned animals are not organic. A transitioned animal is certified to produce organic milk under an exemption to the regulations that is allowed only in organic dairy—for example, there is no transition exemption to convert non-organic meat animals to organic. They cannot be sold for organic slaughter and should not be allowed to be sold as an organic dairy animal. If culled from the herd, a transitioned animal should be sold into the conventional market, whether it is a dairy or a beef market. There will be no decrease in the asset value to the owner as the original value of the livestock was as a conventional animal and the owner has recouped any expense incurred in transitioning to organic certification through the price differential received for organic milk produced. Some justifications for this position are below:

- A transitioned animal, by definition, did not have organic management throughout its life. It did not have equal inputs to an animal that was raised on organic feeds and management (more costly than non-organic inputs) its whole life and therefore should not have as high an economic value as dairy stock that are organic from the last third of gestation.
- To equate transitioned dairy animals to last-third organic animals de-values those animals raised organically from the last third of gestation and the investment by farmers to achieve that status.
- It discriminates against the producers who had to invest more money in the raising of the last third of gestation dairy animals and unfairly rewards the producer of transitioned animals. This unfair economic advantage of transitioned animals is what has driven the abuse of the current rule and it will continue to drive abuse of a new rule if the door on transitioned dairy replacement animals being equal to last third of gestation dairy animals is not tightly shut.
- Tracking of transitioned animals versus last-third of gestation animals will require no more record keeping or work for producers or certifiers than should already be done. Organic slaughter stock and last-third of gestation dairy stock are the same category. Transitioned dairy animals will not be able to be sold as either organic slaughter or dairy replacement stock, which will be easy to track as their status will never change.
- Putting transitioned animals on the same level as those raised as organic from the last third of gestation undermines any environmental benefits of organic livestock production.
- There is no reason why a new start-up should not buy organically certified cows, as the organic dairy industry is now mature enough to have enough dairy replacements, or would have if the price reflected a fair return. The December 21, 2000 Federal Register National Organic Program Final Rule does not mention an option of buying and transitioning conventional heifers as a means to start a new organic dairy herd. It states that the one-time transition is for an “established, discrete dairy herd in conjunction with the land resources that sustain it.”
- Having a thriving market for last third replacements will allow small to mid-size organic dairy operations to diversify into raising and selling replacements whose price will better

reflect the true cost of organic dairy at their scale of production if they are not competing against transitioned animals for the same market.

Should the final rule should use the term “operation” to describe the regulated entity [instead of “producer”]?

This question is broader than organic dairy and has implications for all certified entities.

The regulatory language (§205.2 Terms defined), has no definition for certified entity. Perhaps there should be one. NOP needs to standardize a legal structure for a certified operation as defined in the regulations. Under the regulatory definition, a “producer” is a “person,” which is defined as “An individual, partnership, corporation, association, cooperative, or other entity.” For many, the farming operation is a DBA (doing business as) under a sole proprietor’s social security number or under an LLC, corporation, or partnership using a TIN or EIN number. Many individuals and business entities have many production, distribution, and branding “partnerships” under DBAs. Within the regulation, the terms “producer” and “operation” are used in different contexts and at times seem interchangeable.

“Certified operation” is defined as “A crop or livestock production, wild-crop harvesting or handling operation, or portion of such operation that is certified by an accredited certifying agent as utilizing a system of organic production or handling as described by the Act and the regulations in this part.”

A producer with an established conventional herd can use the one-time exemption to transition their whole herd in order to maintain the genetics and inbred immunities that the herd has developed, but only if the owner(s) have not held more than 10% ownership share of an organic operation that has already used the one-time exemption. The regulations also define a person as an ‘individual, partnership, corporation, association, cooperative or other entity’ (section 205.2).” The intent of tying the transition exemption to an operation to prevent organic dairies from transitioning multiple herds would be more directly and effectively accomplished by tying the transition to the “responsibly connected person(s).” In accordance with the “responsibly connected person” approach, any person who is a partner, officer, director, holder, or owner of 10 percent or more of an applicant or a recipient of certification would only be allowed a one-time herd transition exemption. An exemption regulated in this manner would stop new start-ups that consisted of, or included, responsibly connected persons who had already used the one-time exemption, thus ending the ability to transition multiple conventional herds to organic. Conversely, attaching the exemption to an operation, as recommended by NOP, would allow any newly certified entity (however configured) to be eligible for the one-time transition of a conventional dairy herd each time a business arrangement was reconfigured, which could include persons with a 10% or more ownership stake in another operation that had already used the one-time exemption. Continuing to allow the one-time exemption to be used by the same person(s) to transition under multiple entities is not leveling the playing field. Tying the one-time exemption to a responsibly connected

person will greatly help level the playing field, although the only way to really level it would be to impose a limit on how many animals each responsibly connected person could transition, such as 250 animals.

Thus, attaching the one-time transition exemption to the “responsibly connected person(s)” would more effectively fulfill a primary goal of the proposed rule—to prevent organic dairies and or individuals, from transitioning multiple conventional herds or groups of animals. It would do so in a manner that would preclude producers from circumventing the one-time rule. When the operating entity is a DBA operation, many certifiers will look for the responsibly connected person to hold legally accountable.

We understand that some certifiers may have limited support for requiring the tracking of herd owners and including that information in the organic certification, but it is a necessity. Those certifiers will have to follow the history of the responsible connected person(s), which may be difficult but an operation with several DBA's will be just as difficult to track. Ownership in businesses are easily tracked electronically on a state level, so should be possible through the organic database. Certifiers are used to thinking of "operations" as being certified and associating "responsible connected people" to those operations. Without that connection, there is no legal entity to work with.

Timeframe

NOP proposes that all requirements be implemented upon the effective date of a final rule, with an exception for any transition that was already approved by a certifying agent. It requests comments about whether an implementation timeframe is necessary for organic dairies to comply and what that timeframe should be.

We urge that all requirements of the rule be implemented immediately upon publication of the Final Rule, with the only exception being those dairies that have already started their transition and were already approved by a certifying agent. Having anticipated a Final Rule since 2015, no one can validly claim they need more time.

Conclusion

We need a Final Rule on the origin of livestock and we need it now. At the beginning of the organic dairy movement, one of the big drivers was economic justice for farmers. We have lost thousands of farmers since then. Organic production was intended as an alternative for family-scale producers and it has worked. However, much of the growth in the industry has been usurped by industrial scale operations gaming the system. If it wasn't for the factory farms there could have been thousands of additional dairies saved and converted to organic. The resulting psychological damage to families in rural communities is almost incalculable.

We need to protect the integrity of USDA organic certification so that now that the glut of organic milk has finally subsided, we will have a level playing field on which we can re-

establish a thriving organic dairy market that pays a fair price to producers while guaranteeing the integrity of the product for consumers. Such a regulation needs to be implemented immediately when the Final Rule is published with the only exception being those dairies that have already started their transition and have registered their Organic Plan with a certifier. Enforcement is the key, as it is with any regulation. Within certification agencies, inspectors, and desk reviewers play key roles in enforcement of the status of transitioned livestock and verification of livestock records. Accountability requires a high level of cooperation, as well as strict auditing of animal lists and enforcement, if it is to have any effect on the organic supply market and hopefully secure some form of future for small to mid-size organic dairies.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Terry Shistar".

Terry Shistar, Ph.D.
Board of Directors