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December 2, 2019

Dr. Paul Lewis, Ph.D.
Director Standards Division
National Organic Program
USDA-AMS-NOP
Room 2646 – So., Ag Stop 0268
1400 Independence Avenue SW
Washington, DC 20250-0268

Re: Origin of Livestock Proposed Rule;
Docket Number AMS-NOP-11-0009-1572
Submitted electronically

Dear Dr. Lewis,

NOFA-NY strongly supports the proposed Rule on Origin of Livestock originally published in April 2015 (a clarification of 205.236) and we urge the USDA National Organic Program to publish a final rule, as quickly as possible, as well as to reject any efforts to dilute or weaken the proposed rule. NOFA-NY fully supports the comments of our partner organizations, including the National Organic Coalition, the Northeast Organic Dairy Producers Alliance, and NOFA-VT. In 2015, NOFA-NY Certification (a subsidiary of NOFA-NY) submitted specific comments to the proposed Rule which are appended here.

Founded in 1983, the Northeast Organic Farming Association of New York (NOFA-NY) is the premier statewide organization growing a strong organic and sustainable agriculture movement in New York State and is part of a regional network of seven Northeast Organic Farming Associations. NOFA-NY provides education and assistance to local organic and sustainable farmers; connects consumers with organic and sustainable farmers; advocates for policies that support a sustainable and fair food and farm system at both the state and federal levels; and is the largest USDA-accredited organic certifier in New York, certifying over 1,000 organic operations in the state.

New York State is a top US producer of organic products, ranking third in number of organic farms nationwide, with over 1800 organic certified entities statewide. New York has 670 certified organic dairies and NOFA-NY certifies 439 of them. In the 2014 organic survey, New York ranked "second in the nation for the number of organic farms with milk cows and for sales of organic milk." During this period, New York's top organic agricultural product

was milk from cows.[1] With one of the biggest marketplaces in the world in the New York City metropolitan region, New York participates in a large portion of the over $52 billion in organic sales nationwide.

Clarifications to the Origin of Livestock Rule in organic dairy production have been called for since the beginning of the federal organic regulations in 2002. It was the intent of the origin of livestock conversion provision to facilitate the transition to organic for livestock producers. However, it was not the intent to routinely transition non-organic animals to an organic operation, nor should this provision be used for this purpose.

The misuse of this provision by allowing the continual transitioning of non-organic animals has served to suppress the full build-out of an organic livestock market, created an un-level playing field, and caused direct harm to organic dairy producers who follow the intent of the original Rule, due to significant differences in costs of production, as well as pay price.

For the state of New York, this has been particularly devastating. New York has a large demand for organic dairy products in one of the largest marketplaces in the world (New York City), and in fact, the entire Northeast is a net deficit producer of organic milk, meaning demand outpaces supply in the region. While the demand for all fluid milk has been weakening, the demand for organic whole milk has been continuing to increase.[2] Yet, our dairy producers are unable to take advantage of this potential opportunity turned sour by bad, inconsistent policy of USDA/NOP.

Rather than encouraging producers to build out their own organic herds, or facilitating the development of a strong organic heifer market, the allowance of continual transitioning permits a significantly uneven playing field (resulting in unfair competition) and stifles demand for organic young stock.

NOFA-NY certifies to the intent of the Origin of Livestock Rule, which grants a one-time transition of conventional livestock into organic production. However, some producers – mostly large factory organic dairies – all outside of New York – have been consistently transitioning entire, conventionally-raised herds to organic status when they reach milking age every year, and therefore bypassing the additional costs of raising a calf organically from birth to adulthood in compliance with the NOP. The exploitation of the Origin of Livestock one-time exemption has led to a lack of consistency between organic certifiers and interpretation of standards nationwide. This disadvantages all NOFA-New York organic dairy operations who must –and do – adhere to the spirit and letter of the USDA NOP.

In addition, for consumers, the success of the organic label is built on consistent standards uniformly applied by accredited certifiers. With the current differential interpretation of the Origin of Livestock Rule, there is a significant risk of the loss of trust for the label by consumers. Comments from NODPA note:

[1] Office of the New York State Comptroller, Thomas P. DiNapoli: https://www.osc.state.ny.us/reports/other/organic_farm2016.pdf)

[2] Northeast Organic Dairy Producers (NODPA)comments 12/2/2019 on the Origin of Livestock Proposed Rule

> "Conventional youngstock being brought onto operations on a continuous basis, as is now practiced, belies the trust of organic dairy consumers who expect that organic milk is coming from animals that have not been treated with antibiotics or other prohibited substances nor fed genetically modified or other prohibited feeds. While rearing organic dairy replacement from the last third of gestation is more expensive than other methods, not doing so will undermine the integrity of the organic seal, directly expose small to mid-size organic dairy operations to a fluctuating pay price below their costs of production and fraudulently market milk as organic that clearly does not meet the expectations of the consumer."[3]

The biggest disadvantage to our farmers is cost of production. Data from A. Fay Benson at Cornell University Organic Dairy Program (Appendix B) and Organic Valley (Appendix C) put the difference in raising a conventional versus organic calves for the first year at anywhere from ~$625 to ~$2500 per calf (per year). The range in these numbers come from whether the additional costs are confined solely to the organic feed requirement (yielding a differential of $625) or a more comprehensive approach which includes other factors such as labor, buildings, machinery, health costs, trucking, manure handling, and culling. In addition, milk is fed for an average of 111 days versus 50 days for conventional dairies.

> "The reason milk is fed longer on organic farms is to give the calf better vitality to protect it from calf health issues such as naturally occurring coccidiosis. On conventional farms the synthetic Coccidiostats are used to control this disease and are also a growth stimulant which shortens the period a calf is fed milk. Also during the time calves are fed milk, labor is the most intensive because the calves are handled individually."[4]

Synthetic Coccidiostats are not permitted in organic production.

With such a differential in cost of production, it is clear to see why those dairies using continual transitioning of animals are able to sell their milk at a significantly lower price.

In 2019 we watched as organic milk came into NY processors at $20 cwt from out of state, competing with New York organic farmers who are contracted ~$32 cwt or more just to cover cost of production. It makes sense that **processors are dropping New York organic producers in favor of cheaper, out-of-state milk.** This problem is happening throughout the Northeast and parts of the Midwest, including Wisconsin and Ohio.

[3] Northeast Organic Dairy Producers (NODPA)comments 12/2/2019 on the Origin of Livestock Proposed Rule

[4] A. Fay Benson, Cornell Organic Dairy Program *Raising Dairy Replacements Under Organic Rules Raises Cost*, November 2019. Personal Communication.

This dynamic has caused processors to drop organic contracts with New York organic dairy producers, as they balance with significantly lower-cost milk from elsewhere. Our farmers are left with nowhere to sell their organic milk, and we are losing our organic dairies, which has a devastating ripple effect throughout rural communities.

The introduction of the federal organic label administered by the National Organic Program was supposed to provide a level playing field for all using the organic label. The oversupply conditions in the organic dairy sector, and therefore the low pay prices to organic dairy farmers, have been exacerbated by the continued existence of these loopholes. USDA should close loopholes to ensure that:

- Organic dairy animals must be raised organically from the last third of gestation or be raised organically for one year if transitioning a conventional herd to organic, which is allowed only once.
- Once a distinct herd is transitioned to organic, all animals must be raised organically from the last third of gestation.
- Cycling of dairy animals in and out of organic production is prohibited.

NOFA-NY concurs with the National Organic Coalition (NOC) in also proposing the following alterations to the proposed rule which will provide additional clarity of the principles outlined by the original authors of the Rule[5]:

> "1. NOC proposes that 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. We believe that the definitions and words of the proposed rule should be tightened up to ensure that an individual who is a member of multiple LLCs or corporations is not able to claim the transition exemption multiple times. Given that the dairy industry is now mature enough to have enough dairy replacements, new start-up operations can purchase organically certified cows rather than transitioning conventional heifers as a means to start a new organic dairy herd. In addition, we believe that the proposed change as described above is consistent with the intent of the authors of the organic rule, who state the one-time transition is for an "established, discrete dairy herd in conjunction with the land resources that sustain it" rather than for a new start-up operation.
>
> "2. NOC proposes changes to § 205.236 to ensure that transitioned animals are not sold as certified organic.

[5] National Organic Coalition 12/2/2019 comments on the Origin of Livestock Proposed Rule

Though transitioned animals are certified to produce organic milk, they cannot be sold for organic slaughter and have not been managed organically over their entire lives. Allowing transitioned animals to be sold as organic is not fair to the producers who have invested money to raise an animal organically from the last third of gestation.

"3. While NOC recognizes the important role that breeder stock can play in developing the genetic base of a livestock operation, we do not support allowing organic operations to bring non-organic breeder stock on at any time given that this allows for a "back door" for rapidly increasing the number of livestock that are part of the production of organic products. For this reason we propose that breeder stock may only make up 5% of the total number of breeding animals. We also propose that female breeder stock be prohibited for dairy operations given that co-mingling of the non-organic breeder stock milk with certified organic milk is a happenstance too easy to occur, either through intention or by accident. "

The Northeast Organic Farming Association of New York strongly supports the 2015 proposed Rule on Origin of Livestock, and urges USDA to move as fast as possible to the Final Rule. In 2015, we offered some comments which we believe would strengthen the Rule (attached), and we support those suggested by the National Organic Coalition. However, we believe we have laid out the imperative for our farmers and the entire organic dairy industry that this Rule be finalized quickly and without any move to dilute or weaken the Rule.

Sincerely,

Liana Hoodes

Liana Hoodes,
Policy Advisor

Attachments:
Appendix A: NOFA-NY Certified 2015 Comments
Appendix B: Fay Benson Report, *Raising Dairy Replacements Under Organic Rules Raises Cost*
Appendix C: Organic Valley: *Cost Analysis of Replacement Dairy Heifers from 0-12 months of age*

Appendix A

NOFA-NY Certified Organic, LLC

840 Upper Front Street • Binghamton, New York 13905
Phone 607-724-9851 • Fax: 607-724-9853
Email: certifiedorganic@nofany.org • www.nofany.org

July 20, 2015

Mr. Scott Updike
Agricultural Marketing Specialist
National Organic Program
USDA-AMS-NOP
Room 2646 So. Ag Stop 0268
1400 Independence Avenue, SW
Washington, DC 20250-0268

RE: Docket AMS-NOP-11-0009; NOP-11-04PR

Dear Mr. Updike:

Thank you for the opportunity to provide comment on the Proposed Rule for the Origin of Livestock. We appreciate the National Organic Program's efforts to strengthen the existing rule and provide greater clarity and consistency between certifiers.

NOFA-NY Certified Organic, LLC (NOFA-NY) currently certifies 342 organic livestock operations, of which 319 are organic dairies. We have had a successful dairy transition program since before the NOP, and have worked with many dairy operations through the transition process over the years.

We believe the proposed rule is very good, and there are just a few areas where we would like to provide comments.

Under definitions:

Dairy Farm. A premises with a milking parlor where at least one lactating animal is milked.

We believe this should be changed to Dairy Operation. An operation that is certified or is applying for certification of organic dairy animals and production of organic milk or milk products.

This will provide clarity that only operations intending to produce organic milk can transition a dairy herd, but does not limit the opportunity to operations currently milking cows, or to operations with a milking parlor. There are many dairy operations that do not have milking parlors. We have also seen many start-up operations that purchase a group of young stock to transition, but will not have lactating animals until the end of their transition.

Third-year transitional crop – crops and forage from land, included in the organic system plan of a producer's operation, that has had no application of prohibited substances within 2 years prior to harvest of the crop or forage.

The wording "a producer's operation" seems to imply that third year transitional crops from any operation can be fed to transitioning animals. Not only is this clearly not the intent, it would be very difficult for certifiers to verify. Only third year transitional feed from the producer's operation, that is included in their Organic System Plan, should be allowed. If the wording of that definition is changed as follows, it should clarify that.

Third-year transitional crop – crops and forage from land, included in the organic system plan of the producer's operation, that has had no application of prohibited substances within 2 years prior to harvest of the crop or forage.

NOFA-NY has always allowed only one transition opportunity per producer/OSP, and has required that all animals to be transitioned be on the farm at the beginning of transition. The entire distinct herd begins and ends transition at the same time, which seems to be the intent of the rule. We have not had any trouble tracking whether a producer/operation has transitioned, and we are able to track the transition status of individual animals.

We believe having an animal list submitted to the certification office each year is very important to the integrity of the system. Our producers submit an animal list when they apply for transition or first time certification. This list includes animal ID, breed, birthdate, date transition started (if applicable), if animals were farm raised or purchased, slaughter eligibility, and in future years it includes the dams of all young stock added to the list. We send a copy of the prior year's list with the certification update, and producers simply update the list to show animals that are no longer on the farm, including whether they were sold as organic or conventional,, and add all calves born or animals purchased over the past year. The list is updated in our database once a year. Producers keep a current list on the farm, showing any changes since the list was submitted to the office. This system has worked well, and we believe the animal list is an important component in verifying the integrity of the system.

NOFA-NY believes that 205.236 (a) (3) Breeder Stock was intended only for meat animals who suckle and rear their own young. This is the only way organic livestock operations intending to produce organic meat can start a herd. This section doesn't fit well with organic dairy operations because dairy cows do not typically suckle their offspring, making it extremely challenging to monitor what is done with the milk. Dairy cows are milked twice a day, typically for ten months or more, and produce much more milk than needed to feed their calf. It is unrealistic to believe that this milk will not enter the organic milk stream, whether intentionally or unintentionally. Dairy operations have the one-time transition opportunity that farms with meat animals do not have. We would like to see clarification that 205.236 (a) (3) refers only to animals intended for meat production. Allowing dairy operations to bring breeder stock to the farm can result in a continual transition situation, which is what this proposed rule is supposed to address.

We appreciate the clarity of 205.236 (a) (2) overall, but believe that producers should be required to submit an organic system plan to a certifier at the beginning of the 12-month dairy herd transition. We have had very few applicants over the years who qualified to backdate their transition more than a month or two, and we have never had any producer applying for transition that qualified back a full year. Requiring producers to submit an organic system plan to a certifier at the beginning of transition will create consistency among certifiers, and will discourage "certifier shopping". We suggest the following wording:

205.236 (a) (2)(ii) At the beginning of the 12-month period, the producer must describe the transition as part of its organic system plan and submit this as part of an application for certification to a certifying agent, as required in 205.401

This will allow certifiers to evaluate the operation at the beginning of transition, and identify any potential non-compliances early in the transition, rather than right before they believe they are eligible to ship organic milk. It also allows certifiers to issue a certificate for any fields or pastures that qualify in the year transition begins.

Section 205.236 (b) (1) states: "*the following are prohibited: Livestock or edible livestock products that are removed from an organic operation and subsequently managed on a nonorganic operation may not be sold, labeled or represented as organically produced".* This seems to prohibit the "re-transition" of previously certified dairy animals on a transitioning dairy operation. We agree that organic dairy animals should not be allowed to be taken out of organic management, then transitioned back to organic production on a different operation.

We appreciate the work that has gone into the Proposed Rule for Origin of Livestock. Thank you for this opportunity to provide input.

Sincerely,

Lisa Engelbert
Certification Program Administrator

Appendix B

Raising Dairy Replacements Under Organic Rules Raises Cost

A. Fay Benson – Cornell Organic Dairy Program
November 2019

In December of 2018 the New York Organic Dairy Task Force met at the Dairy Farmers of America Offices in Syracuse. There was discussion on the negative impact on Northeast organic dairies created by large dairies in western states entering the organic market. These dairies were utilizing a loophole created in the NOP in the "Origin of Livestock" rule to create a lower cost of dairy replacement production than organic dairies certified by certifiers that allow a onetime transition of dairy animals. The loophole was to be repaired by a new rule in 2015[i] but it was blocked before it could take effect. The Task Force directed and provided funding for Fay Benson, Extension Educator and project manager for the Cornell Organic Dairy Program to complete a study of what it costs for dairy farmers who raise diary replacements without biocides, growth stimulants such as Coccidiostats. The organic method focuses on natural methods to prevent health issues rather than treat them with synthetic treatments. The study was done simultaneously on three certified organic dairies in Central New York. Benson used a series of cost analysis created by Jason Karszes, Farm Business Specialist with Cornell's Pro-Dairy Program. By using the same analysis with the organic diaries as is used for conventional dairies the results would be comparable. Cost and data collected for this analysis included:

• Labor • Feed • Buildings • Machinery	• Health Cost • Trucking • Manure Handling • Culling

Dairy Replacement Cost Differ for the First Year

Western dairies who were being allowed to raise their dairy replacements conventionally for the first year of the animals' lives and then transition the animals to organic status in the final year prior to the animal first starting to milk. The difference in cost of production created by the NOP "loophole" was happening during the first year of the dairy animal's life. For this reason, Benson tracked the cost of raising the dairy animal's first year of life under the natural and more difficult organic regime.

The Results for Organic Farms vs Conventional

The most recent publication by Cornell's Pro Dairy showed that 18 conventional dairy heifer growers in New York averaged $1,060.92 during the first year of an animal's life. Below are the results of all costs of three organic farms who were part of the study.

Conventional Cost	Organic Farm R	Organic Farm A	Organic Farm S
$1,060.92	$3,637.99	$2,312.20	$3,638.85

Realizing that cost of feed accounts for over 50% of the cost of raising a dairy replacement, any changes to that cost dramatically impacts the total cost of that animal. The first stage of a dairy calf's life is also the most expensive and labor intensive. This is when calves are fed milk or milk replacer. In the conventional dairy study this period averaged 50 days. On the organic farms milk was fed for an average

of 111 days. The reason milk is fed longer on organic farms is to give the calf better vitality to protect it from calf health issues such as naturally occurring coccidiosis. On conventional farms the synthetic Coccidiostats are used to control this disease and are also a growth stimulant which shortens the period a calf is fed milk. Also during the time calves are fed milk, labor is the most intensive because the calves are handled individually. Below are some breakouts of the costs per animal per day from the conventional study and the three organic farms. The big difference in Milk cost/day/calf between the conventional and the organic is due to the value of the milk being fed to the calf. Organic milk price is more than double of the conventional milk price. Organic Farm A reduced their cost of milk by feeding some waste milk.

Selected Costs	**Conventional Cost**	**Organic Farm R**	**Organic Farm A**	**Organic Farm S**
Milk /day/calf	$3.60	$8.05	$5.05	$7.05
Labor/day/calf	$1.50	$3.12	$4.93	$3.12
Days fed	50	84	70	112
Pre Weaned Cost/calf-Milk&Labor	$255	$938	$698	$1,139

Here are some breakouts of the costs for feed, Health costs, and Labor associated in the first year of raising an organic dairy replacement calf during its first year.

Organic Farm R						
Pre Weaned		Hours	$/Hour	#, animals		Totals
	Feed Cost/day				8.05	
	Health				0.9	
	Labor/day	0.75	25	7	3.125	
	Days in Group				84	$1,014.30
Group 1						
	Feed Cost/day				2.659737	
	Health				0.12	
	Labor/day	3	25	19	3.947368	
	Days in Group				154	$1,035.97
Group 2						
	Feed Cost/day				1.45	
	Health				0.12	
	Labor/day	0.5	25	19	0.657895	
	Days in Group				154	$343.10
				Total for first year		$2,393.37

Organic Farm A					Cost/Animal	
					per day	
Pre Weaned		Hours	$/Hour	#, animals		
	Feed Cost/day				5.05235	
	Health				0.15	
	Labor/day	2.17	25	11	4.931818	
	Days in Group				70	$709.39
Group 1		Hours	$/Hour	#, animals		
	Feed Cost/day				1.49	
	Health				0.1	
	Labor/day	1	25	20	1.25	
	Days in Group				119	$337.96
Group 2		Hours	$/Hour	#, animals		
	Feed Cost/day				2.46	
	Health				0.12	
	Labor/day	2	25	20	2.5	
	Days in Group				119	$604.52
Group 3		Hours	$/Hour	#, animals		
	Feed Cost/day				0.84	
	Health				0	
	Labor/day	0.5	25	5	2.5	
	Days in Group				28	$93.52
Group 4		Hours	$/Hour	#, animals		
	Feed Cost/day				2.47	
	Health				0	
	Labor/day	0.5	25	5	2.5	
	Days in Group				35	$173.95
			Total for first year			$1,919.34

Organic Farm S					Cost/Animal	
					per day	
Pre Weaned		Hours	$/Hour	#, animals		Total
	Feed Cost/day				7.059	
	Health				0.1	
	Labor/day	0.5	25	4	3.125	
	Days in Group				112	$1,151.81
Group 1		Hours	$/Hour	#, animals		
	Feed Cost/day				2	
	Health				0.25	
	Labor/day	0.5	25	4	3.125	
	Days in Group				84	$451.50
Group 2		Hours	$/Hour	#, animals		
	Feed Cost/day				1.89	
	Health				0	
	Labor/day	0.25	25	4	1.5625	
	Days in Group				112	$386.68
				Total for first year		$1,989.99

[i] https://www.federalregister.gov/documents/2015/04/28/2015-09851/national-organic-program-origin-of-livestock

Appendix C

Cost Analysis of Replacement Dairy Heifers from 0 to 12 months of age

Comparing continuous organic management and non-organic approaches.

NON ORGANIC			ORGANIC	
0 to 3 months	3 to 12 months		0 to 3 months	3 to 12 months
$88 (65 lb x $1.35/lb) [1]	0	WHOLE MILK AND REPLACER	$465 (1,550 lb x $0.30/lb) [2]	0
$84 (350 lb x $.24/lb) [1]	0	CALF STARTER GRAIN MIX	$119 (350 lb x $.34/lb) [2]	0
0	$32 (10 bu x $3.2/bu) [3]	CORN EQUIVALENT	0	$119 (10 bu x $9.00/bu) [3]
0	$8 (50 lb x $.16/lb) [1]	SOYBEAN MEAL EQUIVALENT	0	$38 roasted organic beans 63lb x $.60/lb [2]
$3 (50 lb x $.07/lb) [3]	$210 (3000 lb x $.07/lb) [3]	FORAGE - HIGH QUALITY	$6 (50 lb x $.125/lb) [3]	$281 (2,250 lb x $.125/lb) [3]
0	0	PASTURE	0	$30 (750 lb x $.04/lb) [4]
0	$10	MINERAL/SALT	0	$12
$2	$10	COCCIDIOSTAT	0	0
$447		TOTAL FEED COSTS 0 - 12 MONTHS	$1,070	

Increased cost for organic calf $623

Sources:

1 - Survey of Wisconsin conventional feed mills Nov 2018

2 - Survey of Wisconsin organic feed mills Nov 2018

3 - USDA- Agriculture Marketing Service Nov 2018 https://www.ams.usda.gov/market-news/organic

4 - University of Missouri extension publication "Economics of Pasture-based Dairies" https://extension2.missouri.edu/m192