NOFA-NY
NORTHEAST ORGANIC FARMING
ASSOCIATION OF NEW YORK

July 12, 2021

Dr. Jennifer Tucker
Deputy Administrator, National Organic Program
USDA-AMS-NOP
1400 Independence Avenue SW
Room 2642 – S., Stop 0268
Washington, DC 20250-0268

Re: Origin of Livestock Proposed Rule;
Docket Number AMS-NOP-11-0009; Docket RIN 0581-AD89
Submitted electronically

Dear Dr. Tucker,

The Northeast Organic Farming Association of New York urges the USDA National Organic Program to move swiftly to finalize the Origin of Livestock rules to close existing loopholes and restore fairness for organic dairy producers. NOFA-NY supports the comments of our partner organizations, including the National Organic Coalition, Organic Farming Association, and the Northeast Organic Dairy Producers Alliance.

Founded in 1983, the Northeast Organic Farming Association of New York (NOFA-NY) is the premier statewide organization growing a strong regenerative organic 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 regenerative farmers; connects consumers with organic farmers; advocates 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. Of the 655 organic dairies in New York, NOFA-NY currently certifies 436 of them including 10 who are currently transitioning dairy farms.

New York is a dairy state, and we have consistently been fourth in the United States for organic dairy production. Of the top four dairy states in 2019, New York had the greatest number of dairy farms (607)[i], producing nearly 388 million pounds of milk.

New York State is a top US producer of organic products, ranking third in number of organic farms nationwide, with over 1900 organic certified entities statewide. With one of the biggest marketplaces in the world in the New York City metropolitan region, New York contributes to a large portion of the over $60 billion in organic sales nationwide. Total organic farmgate sales in NY in 2019 were nearly $300 million.

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, and NOFA-NY has submitted comments to proposals put forward by NOP most recently in 2015 and 2019. 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.

To close these loopholes, USDA needs to take the following steps in the final rule:

I. Movement of Transitioned Cows

The final rule should prohibit organic dairy operations from acquiring transitioned animals to expand or replace animals in the organic dairy herd. USDA should prohibit the sales of transitioned animals as certified organic. Not being able to sell transitioned animals is a small price to pay for closing this destructive loophole.

Transitioned organic dairy animals should only be classified as organic dairy animals on the operation on which they were transitioned from conventional to organic. The transitioned animals should lose their organic dairy status if they are sold, transferred, gifted, moved to another operation, or they are included as part of a merger.

Allowing transitioned animals to be sold, transferred, gifted, or moved to another operation while maintaining their status as certified organic dairy animals creates a loophole that will be exploited. Some operations are continually sourcing off-farm transitioned animals, which is less expensive than raising animals as organic from the last third of gestation. This creates an unfair economic advantage for operations making use of the loophole.

Limiting the movement of transitioned animals has economic benefits. Start-up operations should buy organically certified cows. Increased demand for animals raised as organic will create a thriving market for organic replacement animals. This will allow small-to-mid-size organic dairy operations to diversify into breeding replacements whose price will reflect the true cost of organic dairy at their scale of production.

II. USDA Should Clarify "Responsibly Connected" Person

In the final rule, USDA should clarify that a "responsibly connected" person who transitions a herd is bound by the same limit as the operation they are connected to. The intent of the rule can be most effectively accomplished by tying the transition to the *responsibly connected* person(s).

The regulations define *responsibly connected* as "Any person who is a partner, officer, director, holder, manager, or owner of 10 percent or more of the voting stock of an applicant or a recipient of certification or accreditation (§ 205.2)."

In accordance with the "responsibly connected" person approach, any person who is a partner, officer, director, holder, manager, or owner of 10 percent or more of the voting stock of an applicant or a recipient of certification would be allowed a one-time herd transition exemption. Any person with a significant financial or managerial stake in a dairy operation would utilize their one-time eligibility once a transition occurs at that operation.

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. It is important to close this loophole. If USDA does not regulate responsibly connected person(s), an operation and the responsibly connected parties can reconfigure to make use of the one-time exemption repeatedly. 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.

III. Organic Animals Removed from Organic Status Cannot be Transitioned/Re-Transitioned

The final rule should specify that only conventional animals can be transitioned. Organic animals or animals that have previously completed the one-year transition and have been removed from organic certification cannot be re-transitioned.

The only exception to this should be if a conventional producer is buying cows to get a herd together to transition and unknowingly and unintentionally purchases a previously organic animal to include in his herd, that animal could be allowed to transition under the one time transition exemption.

This would eliminate the cycling of large groups of replacement heifers in and out of organic production.

IV. Implementation Timeframe

The rule should be implemented as soon as it is finalized with transitions already in process completed within 12 months.

V. Economic Impact

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.[ii] Yet our dairy producers are unable to take advantage of this potential opportunity due to inconsistent interpretation of USDA/NOP regulation.

The delay in issuing a final rule has resulted in a great deal of economic harm for organic dairy farmers and puts at risk the integrity of the organic seal. The organic dairy farmers who have been managing their cows as organic from the last third of gestation are suffering economic harm compared to operations that are taking advantage of loopholes to continuously convert conventional cows and heifers or those who have been cycling calves in and out of organic management. An organic animal that has been removed from organic status should not be able to transition back to organic. Oversupply conditions in the organic dairy sector, and therefore the low pay prices to organic dairy farmers, have been greatly exacerbated by the continued existence of these loopholes.

The biggest disadvantage to our farmers is cost of production. Data from A. Fay Benson at Cornell University Organic Dairy Program and Organic Valley (full data included in our 2019 comments[iii]) put the difference in raising 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."[iv]

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.

EXAMPLE #1: 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. This problem is happening throughout the Northeast and parts of the Midwest, including Wisconsin and Ohio.

This dynamic caused processors to drop organic contracts with New York organic dairy producers, as they balance with significantly lower-cost milk from elsewhere. Our farmers were 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.

EXAMPLE #2: A producer who was previously certified with a dairy herd in Nebraska surrendered certification in 2020 and moved his herd from Nebraska to Maine in 2021. After being in Maine for 6 months, he starts to look for a certifier to certify his dairy herd in Maine. The first certifier he talked to, he acknowledged that he had previously completed a transition in Nebraska and they told him he cannot do a second dairy transition, but existing cows would be conventional and only their youngstock raised from last 3rd would qualify as organic. He called a second certifier and told them that he had never transitioned before, this certifier told him that he could transition the animals that had not been under organic management before. Later the second certifier contacted the first certifier about this producer and learned that this producer had transitioned in Nebraska.

In this situation where a producer is certifier shopping to see who will let him do what, it would help if the transition was recorded in OID and certifiers had a rule to follow for consistency. Why would the first certifier allow the breeder stock clause to apply to dairy animals, and then the second certifier allow a transition? We would not know if there was a previous transition if the producer is not being honest. This is still an integrity based system and we would not know until we contacted the previous certifier and asked if the producer had transitioned in the past, and then that certifier might not know if the producer had switched to them previously too. According to OID this producer had been certified and surrendered in 2018 and then again certified and surrendered with a different certifier in 2020 in Nebraska.

Could we allow a producer who had previously transitioned under a different business entity under a different certifier in a different state to apply with another certifier for dairy transition under a new business entity on a new farm in another state? This is where it is important to clarify the "responsibly connected" person has a one time opportunity to transition and that previously organic animals removed from certification cannot be re-transitioned.

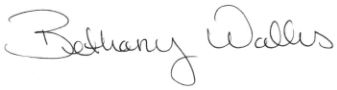
VI. Exceptions to the One-Time Allowance Requirement

NOFA-NY supports the allowance of one 12-month transition, and one transition only, per operation (including clearly regulating responsibly connected person(s)), with no exceptions. This will prevent the rule from being abused.

NOFA-NY urges the USDA National Organic Program to move expeditiously to a final rule clarifying the origin of livestock regulation, and to ensure that the final rule is meaningful and effectively closes loopholes.

Thank you for consideration of our comments.

Sincerely,



Bethany Wallis,
Executive Director

[i] Geiger, Corey, *Organic dairy accounts for 2.3% of the market,* Hoard's Dairyman Intel, December 28, 2020.

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

[iii] https://nofany.org/wp-content/uploads/2020/10/Origin-of-Livestock-Comments-12.2019.pdf

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