



December 2, 2019

Paul Lewis, Ph.D.
Standards Division
National Organic Program
USDA-AMS-NOP
1400 Independence Avenue, SW
Room 2642-So., Ag Stop 0268
Washington, DC 20250-0268

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

RE: Origin of Livestock

Dear Dr. Lewis:

Thank you for this opportunity to provide comment to the USDA National Organic Program (NOP) proposed rule on Origin of Livestock. The USDA has reopened the comment period on the April 28, 2015 proposed rule to amend the origin of livestock requirements for dairy animals under the USDA organic regulations.

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing over 9,500 organic businesses across 50 states. Our members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

The Organic Trade Association continues to support the Origin of Livestock proposed rule and urges USDA to move expeditiously to a final rule to clarify and narrow the allowance to transition dairy animals into organic milk production as a one-time event. In addition to our comments submitted during the original comment period in 2015 (Attachment 1), we are submitting these additional comments to reflect new information regarding the continued need for consistent enforcement of organic dairy standards. Conditions that prompted rulemaking on origin of livestock have not changed. New information since 2015 only reaffirms the need for rulemaking to clarify and strengthen regulations on origin of livestock.

I. Inconsistent enforcement continues to cause economic harm to farmers

Milk sold or represented as organic must be from livestock that have been under continuous organic management for at least one year. This one-year transition period is allowed only when converting a conventional herd to organic. Once a distinct herd has been converted to organic production, all dairy animals must be under organic management from the last third of gestation. Although these requirements are written in the NOP regulations, certifiers are inconsistently interpreting or enforcing the regulations.

Some USDA-accredited certifiers allow dairies to routinely bring non-organic animals into an organic operation, and transition them for one year, rather than raise their own replacement animals under organic management from the last third of gestation. This practice of continuously transitioning dairy animals is a stark contrast to the letter and intent of the original regulations as described in the preamble to the original final rule. Some USDA-accredited certifiers are also allowing dairies to remove organic dairy animals from a herd, raise them using conventional feed and other prohibited management practices, and then retransition them back to organic. This practice of cycling dairy animals in and out of organic production is a violation of the organic regulations.

Because USDA has not taken action to clarify and enforce the regulations for transitioning dairy animals to organic production, the inconsistent enforcement of certifiers has created conditions where some farmers are put at an economic disadvantage. Farmers who do not raise their own organic replacement animals under organic management from the last third of gestation have lower costs of production. Our analysis indicates that organic dairy farmers who raise their calves under continuous organic management from the last third of gestation spend an average of \$600-1000 more per calf than farmers who raise calves conventionally and transition them to organic at one year of age.

Any cost-benefit analysis of the origin of livestock proposed rule should include the economic disadvantage of the status quo and the economic benefits of the final rule. The calculations presented in the 2015 comments from Select Milk show one view of the economic dynamics at play, although it does not account for the economic harm to the majority of organic farmers who are already complying with the one-time transition policy. OTA members are submitting additional information through the new public comment period that reflect more current and thorough responses to the cost-benefit analysis while taking into account the changing market dynamics and the economic disadvantage of the status quo.

II. Organic dairy industry is experiencing stagnant growth

A level playing field for organic dairy operations is needed now more than ever. While growth in the organic industry is strong overall, the organic dairy sector is challenged by over-supply and changing consumer interests. According to the *Organic Trade Association's 2019 Organic Industry Survey*, this is the second year in a row that growth has fallen below 1% after experiencing high single-digit to low double-digit growth from 2010 to 2016. The milk and cream subcategory declined 1.3% in 2018, an only slight improvement on the 1.9% loss in 2017. With the downward pressure on dairy prices and slowdown in organic dairy consumption and sales, the importance of fair enforcement of regulatory standards is paramount.

Although the current state of over-supply in the organic milk market may reduce the incentive to expand dairy herds, organic replacement stock is available if/when a farm chooses to do so. OTA members indicate that there is sufficient supply of organic heifers, and that the availability of organic replacement stock is not expected to be a barrier to herd expansion under the final rule.

III. Federal Advisory Committee reiterates need for rulemaking

At the fall 2018 meeting of the National Organic Standards Board (NOSB), at the request of the Organic Trade Association through our public comment, NOSB unanimously passed the following resolution urging the Secretary of Agriculture to directly issue a final rule for Origin of Livestock (Attachment 2):

“It has come to the attention of the National Organic Standards Board (NOSB) that the continued state of varying interpretations and practices around the Origin of Livestock standards is creating market instability for organic producers. The 2015 USDA Origin of Livestock Proposed Rule was based on six recommendations from the NOSB between 1994 and 2006. The proposed rule responds to findings from the July 2013 USDA Office of Inspector General (OIG) audit report on organic milk operations stating that certifying agents were interpreting the origin of livestock requirements differently¹. Rulemaking is necessary to ensure consistent interpretation and enforcement of the standards for origin of livestock and provide industry with additional clarity of application of the organic dairy standards. In early 2017, the Origin of Livestock Proposed Rule was removed from the government’s Unified Agenda of Regulatory and Deregulatory Actions. Support for this rule has been expressed through public comment by the majority of organic stakeholders². Strong federal oversight is essential for creating a fair and level playing field for all certified organic operations. Therefore be it resolved by unanimous vote, the National Organic Standards Board—as USDA’s Federal Advisory Board on organic issues and representing organic farmers, ranchers, processors, retailers and consumers—urges the Secretary to directly issue a final rule for Origin of Livestock that incorporates public comments submitted in response to the Proposed Rule (Docket Number AMS-NOP-11-0009).

¹ <https://www.usda.gov/oig/webdocs/01601-0002-32.pdf>

² <https://www.regulations.gov/docket?D=AMS-NOP-11-0009>”

IV. Organic dairy industry in agreement that rulemaking is needed

The organic dairy industry is united in agreement that final rulemaking on origin of livestock is needed to clarify that dairy herd transition is one-time event. In February 2019, the Organic Trade Association’s Dairy Sector Council sent a letter to USDA urging the agency to publish a final rule (Attachment 3). The signatories on the letter represented over 90 percent of the current U.S. organic dairy market. From small family farms to some of the largest organic dairies and companies in the world, the organic dairy industry united to demand strong and consistent standards.

V. Congress directs USDA to issue a final rule

The prolonged inaction of USDA to complete final rulemaking on origin of livestock has caught the attention of Congress. Congress has demonstrated strong bi-partisan support for this important organic issue. Both the House and Senate Agriculture Appropriations bills for Fiscal Year 2020 requires USDA to issue a final rule on the Origin of Livestock within 180 days of enactment of the law (Attachment 4 & 5):

“Not later than 180 days after the date of the enactment of this Act, the Secretary of Agriculture shall issue a final rule based on the proposed rule entitled “National Organic Program; Origin of Livestock,” published in the *Federal Register* on April 28, 2015 (80 Fed. Reg. 23455): *Provided*, That the final rule shall incorporate public comments submitted in response to the proposed rule.”

The House Agriculture Subcommittee on Biotechnology, Horticulture, and Research has hosted two hearings on organic industry issues in 2019. In both hearings (Attachment 6 & 7), the need for rulemaking on origin of livestock is referenced.

- At the hearing on July 17, 2019, *Assessing the Effectiveness of the National Organic Program*, Chairwoman Stacey Plaskett inquired with USDA-AMS about the status of rulemaking on origin of livestock. Other committee members including Congresswoman Kim Schrier and Congresswoman Chellie Pingree urged USDA to move forward with origin of livestock rulemaking.
- At the hearing on October 30, 2019, *State of Organic Agriculture*, Chairwoman Stacey Plaskett inquired with witness and organic dairy farmer Steve Pierson of Organic Valley about the need for rulemaking on origin of livestock.

VI. Longstanding need for regulatory clarification is well-documented in USDA record

The need to clarify this aspect of the organic regulations has been needed for some time.

- The National Organic Standards Board began working to clarify origin of livestock standards in 1994 and has developed six recommendations between then and 2006 (Attachments 8-11).
- In the preamble to the final regulations published in 2000 that established the National Organic Program regulations, USDA-AMS explained that the intent of the regulation is that whole herd transition is a one-time event (Attachment 12).
- In 2006, AMS stated that the issue of inconsistent allowances for replacing organic dairy animals is a significant concern of the organic community, and that additional clarity is needed regarding the transition of dairy animals in to organic production (Attachment 13).
- The July 2013 Office of Inspector General audit report identified inconsistencies in the implementation of the origin of livestock requirements, and noted that such inconsistencies lead to some producers having competitive advantage over others (Attachment 14).
- As stated in the 2015 Origin of Livestock Proposed Rule, “AMS has determined that the current regulations regarding the transition of dairy animals and the management of breeder stock on organic operations need additional specificity and clarity to improve AMS’s ability to efficiently administer the NOP.”

VII. Highlights of OTA’s previously submitted comments on the proposed rule

We submitted comments on the Origin of Livestock proposed rule during the original comment period (Attachment 1). Those comments still stand, with one exception: instead of an 18-month implementation period as requested in 2015, we now support immediate implementation of a final rule on origin of livestock.

In our previously submitted comments, we expressed support for the proposed rule that clarifies that the one-year transition period for converting conventional dairy animals to organic is a one-time event. The proposed rule will be effective in eliminating much of the uneven playing field that organic dairy producers currently face under the existing regulations. Under the proposed rule, operations that are not milking cows will not be allowed to purchase conventional calves, raise them for one year organically, and then sell them to organic dairies. Additionally, organic dairy farms will not be allowed to continuously transition in replacement animals. Instead, after they have transitioned to organic production

once, all replacements will need to be raised organically from the last third of gestation. These outcomes align with the intent of the original regulations as described in the preamble to the original final rule.

In order to ensure the rule levels the playing field among organic livestock producers in a way that is easily understandable to the entire organic supply chain, we feel that the following changes must be incorporated into the final rule:

- One-time transition should be tied to each individual “certified operation” rather than “producer” because this term and approach are better understood by the entire organic supply chain and accomplish the same restrictions in how origin of livestock is regulated on organic dairy operations.
- Breeder stock used to produce organic offspring should not be allowed to rotate in and out of organic production, and the regulations should reflect the language contained in the Organic Foods Production Act (OFPA), which allows the purchase of non-organic breeding stock from any source.
- Third-year transitional crops fed to transitioning dairy animals must be produced on the certified dairy operations and described in its Organic System Plan (OSP).
- Disallowing a one-time transition for fiber-bearing animals puts U.S. livestock producers at a global disadvantage in accessing organic textile markets, and thus fiber animals should be allowed to be transitioned into organic production like dairy animals.

VIII. Widespread support during original public comment period in 2015

Public comments submitted during the original comment period (4/28/2015 - 7/27/2015) reflected widespread consensus and support for the proposed rule. A total of 1,570 comments were submitted and less than 1% of commenters opposed the rule. The other 99% of comments including form-letters were not opposed (either wholly supportive, or supportive with suggestions for the final rule).

Certifiers, advocacy groups, certified operations, consumers and hundreds of other stakeholders commented in support of regulations that would limit transition to a one-time event. Substantive comments highlighted some areas of the proposed rule that would need clarification in order to clarify the intent of the rule and ensure consistent implementation of the final rule (a selection of such comments from OTA members are provided in Attachments 15-24). USDA would need to consider these points and determine a clear path forward in the final rule.

Conclusion

The Organic Trade Association continues to support the Origin of Livestock proposed rule and urges USDA to move expeditiously to a final rule to clarify and narrow the allowance to transition dairy animals into organic milk production as a one-time event. Clarification is long overdue and is critical to leveling the playing field among organic dairy producers. Conditions that prompted rulemaking on origin of livestock have not changed. New information since 2015 only reaffirms the need for rulemaking to clarify and strengthen regulations on origin of livestock. The importance of rulemaking is acknowledged by USDA throughout the historical administrative record. The organic industry, the National Organic



Standards Board, and Congress all support the USDA in moving forward to implement final rulemaking on origin of livestock.

Respectfully submitted,

Johanna Mirenda
Farm Policy Director
Organic Trade Association

cc: Laura Batcha
Executive Director/CEO
Organic Trade Association

List of Attachments (please note the PDF bookmark feature to navigate attachments):

1. Organic Trade Association's comments submitting during the original comment period in 2015
2. National Organic Standards Board resolution on Origin of Livestock from fall 2018
3. Organic Trade Association's Dairy Sector Council letter to USDA
4. Senate Agriculture Appropriations bill for Fiscal Year 2020
5. House Agriculture Appropriations bill for Fiscal Year 2020
6. Transcript from Congressional Hearing, July 17, 2019
7. Transcript from Congressional Hearing, October 30, 2019
8. NOSB Recommendation, Livestock Sources, 1994
9. NOSB Recommendation, Origin of Livestock, Fall 2002
10. NOSB Recommendation, Origin of Livestock, Spring 2003
11. NOSB Recommendation, Breeder Stock, Spring 2003
12. NOP Final Rule, December 21, 2000 (65 FR 80548)
13. NOP Final Rule, June 7, 2006 (71 FR 32804)
14. Office of Inspector General audit report, July 2013
15. Organic Valley, 2015
16. Stonyfield, 2015
17. WhiteWave, 2015
18. Harmony Organic Dairy, 2015
19. Fagundes Family Farm, 2015
20. WODPA, 2015
21. CCOF, 2015
22. OTCO, 2015
23. QAI, 2015
24. ACA, 2015



July 27, 2015

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

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

Re: Origin of Livestock Proposed Rulemaking

Dear Mr. Updike:

The Organic Trade Association (OTA)¹ would like to thank the National Organic Program (NOP) for releasing the proposed rule on Origin of Livestock. The need to clarify this aspect of the organic rule in the regulations has been needed for some time. OTA has convened an industry task force that represents the entire organic supply chain (producer, processor, and certifier) to shape our comments to NOP on the proposed rule. In 2011, OTA convened an industry task force that formed the basis for our white paper submitted to NOP on the topic. This white paper is attached to our comments as Appendix A for historical reference.

NOP’s proposed rule ties the one-time transition for organic dairy cows to the NOP defined term “producer” and eliminates much of the uneven playing field that organic dairy producers currently face. Operations that are not milking cows will not be allowed to purchase conventional calves, raise them for one year organically, and then sell them to organic dairies. Additionally, organic dairy farms cannot continuously transition in replacement animals. Instead, after they have transitioned to organic production once, all replacements will need to be raised organically from the last third of gestation. We applaud NOP for this effort.

However, consistent with our position expressed in the 2011 white paper, we continue to feel that the one-time transition should be tied to the NOP defined term “certified operation²” rather than “producer³,” as this better accommodates the various business structures engaged in the organic dairy industry and more clearly articulates who is eligible for a one-time transition, allowing for more effective enforcement from

¹ The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing organic businesses across 50 states. Its members include growers, shippers, processors, certifiers, farmers’ associations, distributors, importers, exporters, consultants, retailers and others. OTA’s Board of Directors is democratically elected by its members. OTA’s mission is to promote and protect the growth of organic trade to benefit the environment, farmers, the public and the economy.

² § 205.2 *Certified operation*. 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.

³ § 205.2 *Producer*. A person who engages in the business of growing or producing food, fiber, feed, and other agricultural-based consumer products

Accredited Certifying Agents (ACAs). Below, we provide background and comments to support our position on tying transition to the “certified operation” as well as additional comments and suggestions on how to further clarify and implement the intent of the origin of livestock provisions of the USDA organic regulations.

Background

NOP proposes tying the allowance for a one-time transition for organic dairy cows to the “producer” rather than to an “entire distinct herd” as it is now in the existing regulations. This proposed rule will represent a significant shift in how organic businesses are regulated and how they will need to plan for future growth. We would like to acknowledge that the proposed rule does eliminate much of the uneven playing field that organic dairy producers have faced under the existing regulations. The proposed rule, as written, would prohibit continuous transitioning of animals on any given operation whether it be a heifer development facility, where non-organic heifers are routinely transitioned to organic dairy production over the course of 12 months and then sold or transferred to organic dairies, or an organic dairy that routinely purchases non-organic replacement heifers and transitions them to organic dairy production on an ongoing basis.

By eliminating the regulatory allowance for these two systems that continuously bringing in non-organic replacements onto an organic operation, NOP aligns the regulations with the intent of the original regulations, which are enumerated in the preamble to the final rule published in 2000:

FR 65:12-21-2000, p. 80570:

“After the dairy operation has been certified, animals brought on to the operation must be organically raised from the last third of gestation. ... Finally, the conversion provision cannot be used routinely to bring non-organically raised animals into an organic operation. It is a one-time opportunity for producers working with a certifying agent to implement a conversion strategy for an established, discrete dairy herd in conjunction with the land resources that sustain it.”

The 2015 origin of livestock proposed rule’s regulatory changes prevent producers from routinely bringing non-organically raised animals into an organic operation, and acknowledge that the one-time transition is meant to be a conversion strategy for each distinct operation. We agree with this change in approach to transition allowance.

In the preamble to the proposed rule, NOP released a number of scenarios to explain how the proposed rule will affect various types of dairy operations and business structures. However, there remains a significant lack of clarity on how the proposed rule will affect the myriad of business types and structures currently engaged in the organic livestock industry. In order for OTA’s stakeholders to provide comment to NOP, we felt it was necessary to develop further analysis of the effects the proposed rule would have on the industry. The scenarios and analyses used to form the basis of OTA’s comments look at each scenario under the current regulations, the NOP proposed rule, and OTA’s 2011 white paper suggestions. This analysis is attached below in Appendix B.

We offer the following summary and more detailed comments on where we feel changes to the proposed rulemaking action are warranted.

Summary:

- One-time transition should be tied to each individual “certified operation” (that meets the definition of a proposed new term: “dairy operation”) rather than “producer” because this term and approach are better understood by the entire organic supply chain and accomplish the same restrictions in how origin of livestock is regulated on organic dairy operations.
- Breeder stock used to produce organic offspring should not be allowed to rotate in and out of organic production, and the regulations should reflect the language contained in the Organic Foods Production Act (OFPA), which allows the **purchase** of non-organic breeding stock from any source.
- Third-year transitional crops fed to transitioning dairy animals must be produced on the certified dairy operations and described in its Organic System Plan (OSP).
- Issuance of a final rule should include an 18-month implementation period to allow adequate time for businesses to adjust their practices and for education and enforcement of the rule revisions.
- Disallowing a one-time transition for fiber-bearing animals puts U.S. livestock producers at a global disadvantage in accessing organic textile markets, and fiber animals should be allowed to be transitioned into organic production like dairy animals.

Tie transition to “Certified Operation”

In OTA’s 2011 white paper on the origin of livestock issue, we suggested that one-time transition be tied to an individual certified operation. The majority of OTA’s recently assembled task force on origin of livestock continues to support tying one-time transition to each certified dairy operation. This change levels the playing field for dairy producers while also using defined terms easily understood by the entire organic supply chain. Accredited Certifying Agents (ACAs) assign responsibility, issue certificates, or administer adverse actions for each “certified operation,” and organic businesses make specific production decisions for each individual “certified operation” and its corresponding OSP. The various scenarios explored in Appendix B show that the proposed rule, and, specifically, the decision to tie one-time transition with each “producer,” will have dramatically different effects on various operations simply based on the way the owners choose to structure their businesses.

Additionally, one-time transition should only be allowed for operations currently certified, or applying for certification, to produce **organic** milk. We support including an additional definition, so that operations not actually producing organic milk cannot transition dairy animals. However, we remain concerned that NOP’s proposed definition for “dairy farm” may not fully achieve its goal. As such, we suggest NOP eliminate the term “dairy farm” and its proposed definition, and utilize the term “dairy operation” with the following definition:

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

By utilizing this term to determine which types of operations are eligible for a one-time transition of its dairy animals, it is clear that the operation must be either currently, or working towards, producing certified organic dairy. Tying one-time transition to a distinct “certified operation” that meets the suggested definition for the new term “dairy operation” will level the playing field for organic dairy producers in the ways the sector has requested, utilize terms and definitions that are easier for operations to understand, and align with how ACAs currently enforce the organic regulations.

Breeder stock

NOP's proposed rule reiterates OFPA's ongoing allowance for non-organic breeder stock to be purchased from any source, brought onto an organic operation, and produce organic offspring, provided the breeder stock are managed organically for the last one-third of gestation. This reiteration comes despite NOSB recommendations and stakeholder feedback that recommended NOP to prevent the cycling of breeder stock in and out of organic management. OTA understands NOP's position and interpretation of OFPA. However, we feel that by amending the regulations to reflect the actual written text of OFPA, which specifies that non-organic breeder stock may be **purchased** from any source, the concern that breeder stock will regularly cycle in and out of organic management will be drastically reduced.

OFPA: §6509. Animal production practices and materials (b) Breeder stock Breeder stock may be purchased from any source if such stock is not in the last third of gestation.

Current Regulations: § 205.236(a)(3) Livestock used as breeder stock may be brought from a non-organic operation onto an organic operation at any time: *Provided*, that, if such livestock are gestating and the offspring are to be raised as organic livestock, the breeder stock must be brought onto the facility no later than the last third of gestation.

Suggested Regulatory Change: § 205.236(a)(3) Livestock used as breeder stock may be ~~brought~~ **purchased** from a non-organic operation ~~and brought~~ onto an organic operation at any time: *Provided*, that, if such livestock are gestating and the offspring are to be raised as organic livestock, the breeder stock must be brought onto the facility no later than the last third of gestation.

While this regulatory change may not fully prevent the cycling of breeder stock in and out of organic management, it is certainly within NOP's scope of authority and will require any non-organic breeder stock brought onto an organic operation to have been **purchased** from a separate entity. This would provide a substantial disincentive to the cycling of breeder stock in and out of organic management and align better with the consensus of organic stakeholders and NOSB recommendations.

Third-year transitional feed

The current regulations clearly state that dairy operations in their last year of transition can feed transitioning dairy cows third-year transitional feed provided it originates from the farm and is described in the OSP (§ 205.236(a)(2)(i)). The proposed regulations attempt to convey the same restriction, but fall short because the requirement that third-year transitional feed originate on the farm and be described in the OSP is included in the definition of "third-year transitional crop" and is not tied, specifically, to the operation transitioning the dairy animals. OTA suggests amending the proposed regulations as follows to avoid this potential confusion:

§205.236(a)(2)(iii): During the 12-month period, dairy animals and their offspring may consume third-year transitional crops from land included in the organic system plan of the certified dairy operation;

We acknowledge that any animal born during a one-time transition where third-year transitional feed is provided, as part of the ration is, itself, considered a "transitioned" animal and not eligible for organic slaughter. However, it is important to ensure that all third-year transitional feed is sourced from the operation undergoing the transition.

Implementation period

OTA feels that an 18-month implementation period should accompany issuance of a final rule on origin of livestock. Organic farmers cannot develop their operations based on NOSB recommendations or proposed rules, and until a final rule is issued, they will be unsure of exactly what modifications are necessary to comply with the new regulations. For this reason, an implementation period should be standard practice upon issuance of any rule change. It takes two years to bring a new dairy animal into organic production, and currently, the availability of organic replacement animals varies widely from region to region. Since the change to the origin of livestock rule will reduce the availability of replacement animals eligible to be milked organically and reduce the available genetics for herd improvement, we feel that an implementation period is warranted to allow currently certified dairy operations time to adjust their strategies for sourcing replacement animals. Similarly, ACAs will be unsure how exactly to communicate the changes to the rule to certified operations and modify their existing forms and enforcement procedures until the final rule is issued. Eighteen months ensures a full certification cycle occurs for all operations before full adherence with the final rule is enforced. Based on this realistic approach to how USDA organic regulations are adopted by certified organic operations and administered on the ground by ACAs, OTA believes that an 18-month implementation period is appropriate.

Fiber-bearing animals

OTA acknowledges NOP's conservative reading of the exception OFPA grants to transition only dairy animals to organic production as the basis for excluding fiber animals from a one-time transition to organic fiber production. However, we want to also acknowledge the parallel between dairy and fiber and the contrast these two products have to meat. Allowing organic dairy products to come from transitioned animals while requiring that organic fiber must come from animals managed organically from the last third of gestation creates its own uneven playing field and sets US organic producers at a disadvantage in the global marketplace. Currently, existing sheep producers who enter the organic lamb market are essentially locked out of the organic fiber market until their entire breeding flock has been replaced by animals managed organically from the last third of gestation, since comingling issues make shearing mixed flocks (i.e., flocks of breeding ewes that are both non-organic and organic) unrealistic. Fiber obtained from animals that are transitioned in the same manner as organic dairy cows should be allowed to be labeled as "organic" and enter the organic textile market. This will put organic producers in the U.S. on the same playing field as their international counterparts and provide access to a growing global market in organic textiles and fiber.

Conclusion

We welcome the proposed rule on origin of livestock and wish to see its swift move to final rule. However, in order to ensure the rule levels the playing field among organic livestock producers in a way that is easily understandable to the entire organic supply chain, we feel that the following changes must be incorporated into the final rule:

- One-time transition should be tied to each individual "certified operation" (that meets the definition of a proposed new term: "dairy operation") rather than "producer" because this term and approach is better understood by the entire organic supply chain and accomplishes the same restrictions in how origin of livestock is regulated on organic dairy operations.
- Breeder stock used to produce organic offspring should not be allowed to rotate in and out of organic production, and the regulations should reflect the language contained in the Organic Foods

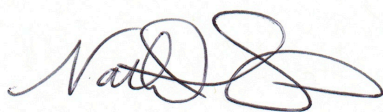
Production Act (OFPA), which allows the **purchase** of non-organic breeding stock from any source.

- Third-year transitional crops fed to transitioning dairy animals must be produced on the certified dairy operations and described in its Organic System Plan (OSP).
- Issuance of a final rule should include an 18-month implementation period to allow adequate time for businesses to adjust their practices and for education and enforcement of the rule revisions.
- Disallowing a one-time transition for fiber-bearing animals puts U.S. livestock producers at a global disadvantage in accessing organic textile markets, and thus fiber animals should be allowed to be transitioned into organic production like dairy animals.

OTA would also like to acknowledge that the rule change may have a significant effect on the availability of diverse genetics for herd improvement. Not all offspring are suitable for certified organic production, and we may see this rule change restrict the availability of good genetics for organic dairy. Nevertheless, leveling the playing field for organic livestock producers, so the industry can continue to grow while maintaining consumer confidence in the organic label, is critical, and this proposed rule accomplishes most of these goals.

On behalf of our members across the supply chain and the country, OTA thanks NOP for this opportunity to comment on the proposed rule making on origin of livestock in organic production.

Sincerely,



Nathaniel Lewis
 Senior Crops and Livestock Specialist
 Organic Trade Association

cc: Laura Batcha
 Executive Director/CEO
 Organic Trade Association

APPENDIX A: OTA White Paper on Origin of Livestock – 2011

-See attachment below

APPENDIX B: OTA Analysis of Current Regulations, Proposed Rule, and OTA 2011 White Paper Suggestions

Scenario	Current practices allowed under existing regulations	Allowance under proposed regulations tying transition to the “producer” and “person”	Allowance under OTA recommendation tying transition to the “operation” or certificate
Producer converting an existing conventional dairy	Allowed to transition a single	Allowed to convert a single distinct herd	Allowed to convert a single distinct herd after

farm	distinct herd after which all replacement animals must be organic from last third of gestation	after which all replacement animals must be organic from last third of gestation	which all replacement animals must be organic from last third of gestation
Producer starting a new single dairy farm	Allowed to transition conventional animals to organic on an ongoing basis if there was no single distinct herd transitioned at the onset	Only allowed to undergo a single transition period of 12 months. All animals must end transition at the same time and after transition, all replacement animals must be organic from last third of gestation	Only allowed to undergo a single transition period of 12 months. All animals must end transition at the same time and after transition, all replacement animals must be organic from last third of gestation
Producer starting more than one new dairy farm or converting more than one existing conventional dairy farms	Sole proprietor / individual who owns all farms	No distinction between operators who own a single operation or multiple operations in current rules	Since the same “producer” owns the various dairy farms, he/she is only allowed to undergo a single transition period of 12 months for all farms . All animals must end transition at the same time on all farms , and after transition, all replacement animals must be organic from last third of gestation
	Individual who has established separate business entities for each dairy farm	No distinction between operators who own a single operation or multiple operations in current rules	Since each dairy farm is owned by a separate “producer” (i.e., individual business entities), each dairy farm is allowed to undergo its own single transition period of 12 months. All animals on any given farm must end transition at the same time, and

			after transition, all replacement animals must be organic from last third of gestation.	any given farm must end transition at the same time, and after transition, all replacement animals must be organic from last third of gestation.
Producer who previously transitioned a herd, stopped farming, and is starting a new dairy farm	No restriction on farmers who had previously transitioned a herd, stopped farming (sold the cows), and would now like to transition in a new herd – he/she could transition in a new distinct herd or buy conventional animals and continuously transition them.	Since one-time transition is tied to a “producer,” and he/she used that one time with the previous herd, this dairy farmer would need to purchase only transitioned or last third organic cows to start the dairy again. However , if the dairy farmer establishes a distinct business structure or “person” (e.g., LLC), then the new distinct business structure could transition in a new conventional herd.	Starting a new dairy farm would be considered a new certified operation with a distinct OSP, and the operation would be eligible for a one-time herd transition on this “new” dairy farm, regardless of whether they transitioned a previous herd.	
Producer who purchases an existing organic dairy farm that has completed transition	Allowed to bring on additional conventional replacements and transition them provided the previous dairy farm had not transitioned a distinct herd.	The new producer would be allowed to continue to milk the existing organic herd and to undergo a one-time transition to grow or replace the herd. After such a transition, all replacement animals must be organic from the last third of gestation.	The new producer would be establishing a new “certified operation” with its own new OSP and, accordingly, would be allowed to continue to milk the existing organic herd and to undergo a one-time transition to grow or replace the herd. After such a transition, all replacement animals must be organic from the last third of gestation.	
Heifer-Rearing Operations (Proposed definition of “dairy farm”)				
Producer with a heifer-rearing operation	Allowed to continuously bring in conventional heifers and	Producers cannot transition dairy animals unless they meet the proposed		

	transition to organic dairy production	definition of a “dairy farm,” AND producers are only allowed one transition, so continuous transition of heifers would be prohibited	
Cow-Calf Operations (Proposed treatment and consideration of “Breeder Stock”)			
<p style="text-align: center;">Producer with a cow-calf operation that only manages breeder stock organically from last third of gestation through weaning of organic young stock</p>	<p>Inconsistent allowances currently with beef operations who manage breeder stock organically from last third of gestation through weaning of organic young stock and then rotate breeder stock back to conventional production</p>	<p>Proposed regulations indicate that NOP does not have authority over management of breeder stock outside of the last third of gestation and nursing of young organic stock</p>	<p>OTA white paper calls for NOP to develop regulations that prevent breeder stock from rotating in and out of organic management</p>

The Organic Trade Association (OTA)
Origin of Livestock Task Force White Paper/ Recommendation

The Organic Trade Association (OTA) is pleased to have the National Organic Program (NOP) prioritize the much needed clarification to the Origin of Livestock standards within the standards development work plans and urges swift completion of the rule making process.

We thank you for the opportunity to provide input in advance of formal rule-making regarding the Origin of Livestock provisions of the National Organic Standards (NOS). Since its founding in 1985, OTA has been the leading voice for the organic business community. OTA has 1,500 members across all parts of the supply chain, including organic farming, processing, distribution, and the retail sector. The dairy and slaughter livestock members of the OTA represent most of the organic meat, milk and dairy products produced and sold across the United States. OTA members include organic farms, suppliers, processors, certifiers, retailers and local, regional and national farmer groups.

In addition to six months of Task Force deliberation, OTA's Origin of Livestock Task Force also sought input from the broader organic community on the Origin of Livestock provisions by hosting an open round table discussion after the scheduled close of the November NOSB meeting on Wednesday November 4, 2009, in order to further industry consensus in advance of rulemaking regarding origin of livestock. The meeting was widely attended by farmers, processors, certifiers, NGOs and consumer groups.

In anticipation of rule making by the NOP on the issue of Origin of Livestock, OTA proposes several changes to the NOS § 205.236 that will clarify and simplify the regulatory language to ensure consistent interpretation.

- For 205-236(a)(2)(i-iii), dairy animals, we propose language focusing on the operation rather than the herd, suggest that a transition be a one-time event, and the exception to the last third requirement.
- For 205-236(a)(3), breeding stock must be maintained organically from their arrival at the certified operation and cannot go in and out of organic production
- For 205-236(b), prohibitions, we simply note that if our proposals for 236(a)(2)(i-iii) were to be accepted, the current (b)(1) would be unnecessary.
- For 236 in general, we propose revising the section on replacement dairy stock requiring farms raising replacements to sell only stock that has been raised organically from the last third of gestation.

Situation Overview¹

There is consensus within the organic community/industry that the NOP regulations on Origin of livestock for dairy animals are in urgent need of clarification through rule making. The OTA recommendation for clarifying the Origin of Livestock practice standard is based three common goals:

- First, the standard must be understandable by all parties with consistent interpretation,
- Second, there needs to be a single standard that applies to all producers regardless of date of entry into organic production and,
- Third, the standard needs to be enforceable.

It is clear from the preamble language that the intent of the regulation is for transition to be a one-time event.

FR 65:12-21-2000, p. 80570:

“After the dairy operation has been certified, animals brought on to the operation must be organically raised from the last third of gestation. ... Finally, the conversion provision cannot be used routinely to bring non-organically raised animals into an organic operation. It is a one-time opportunity for producers working with a certifying agent to implement a conversion strategy for an established, discrete dairy herd in conjunction with the land resources that sustain it.”

The NOP has acknowledged in the proposed rule on pasture that the current language of the rule allows for a double standard regarding replacement animals – allowing some farmers to continue to buy non organic replacement animals, depending on the method they used to initially convert their farms to organic production. Clarification of the rule is essential to eliminate this problem. The OTA task force calls for regulatory language that states clearly what the preamble expresses.

The need for resolution of these issues is urgent, as various certifiers interpret the regulation differently, farmers are held to differing standards, creating un-level playing field.

OTA’s recommendations span the Origin of Livestock Practice Standard 205.236 impacting 205-236(a) (2) i-iii dairy animals, 205-236(a)(3) breeding stock and 205-236(b) prohibitions. The recommendation intentionally excludes clarification to poultry standards focusing on origin of livestock for dairy and breeder stock.

¹ The following comments represent OTA’s input to NOP. While individual trade association members may have divergent views on some specific issues, overall the following recommendations represent the consensus view of OTA’s membership.

In regards to clones and progeny of clones, OTA understands that the tracking and identification of progeny across multiple generations is challenging and trying to solve that problem in this rulemaking could stall the much needed resolution to questions regarding issues of livestock replacement and breeding stock. OTA recommends additional clarification in the future on the progeny issue.

Recommended Regulatory Language

OTA proposes language focusing on the operation rather than the herd, suggest that a transition be a one-time event, and propose rules for that transition.

Recommended changes

(a) Livestock products that are to be sold, labeled, or represented as organic must be from livestock under continuous organic management from the last third of gestation or hatching: *Except, That:*

(2) Dairy animals.

- (i) A dairy operation may undergo a one time transition to organic during which time all animals that are to be part of the organic operation are under continuous organic management beginning no later than one year prior to production of milk or milk products that are to be sold, labeled, or represented as organic; and
- (ii) All animals must be converted at the same time, including young stock. Maintaining young stock as non-organic after conversion is prohibited.
- (iii) Crops and forage from land, included in the organic system plan of a dairy farm, that is in the third year of organic management may be consumed by the dairy animals of the farm during the 12-month period immediately prior to the sale of organic milk and milk products; and
- (iv) Once an ~~entire, distinct herd~~ operation has been converted to organic production, all dairy animals shall be under continuous organic management from the last third of gestation.

(3) Replacement dairy stock - Organic and transitioning operations must only use replacement heifers that are organic since the last third of gestation.

There was considerable discussion within the task force regarding how the regulation could be written in a way that makes clear that an operation whose Organic Systems Plan (OSP) and business model is oriented to raise replacement stock is operating under the last third requirement exclusively and that certified operations rely on last third replacement; but at the same time allows for the reasonable sale/ gifting of certified organic dairy cows (regardless of whether

they are last third or transition to organic production) between farms. Members of the task force raised the example of a young couple starting out and receiving as a gift from within their 'community' an organic dairy cow for their herd and how to allow for a transitioned animal to change ownership. Or for example a farm that is forced to sell their herd due to financial distress or illness and the operation has invested in transition and incurred increased production costs along the way. Is there a way to recoup the costs and sell the herd as certified organic when it may contained animals transitioned under the one-time transition allowance? Certainly these are not large scale examples that effect the majority of producers but the task force was concerned about maintaining an on the ground sensible regulation. OTA does not have specific recommend language to address these circumstances but rather raises the issue for NOP consideration.

(4) Breeder stock. ~~Livestock used as breeder stock may be brought from a nonorganic operation onto an organic operation at any time: Provided, That, if such livestock are gestating and the offspring are to be raised as organic livestock, the breeder stock must be brought onto the facility no later than the last third of gestation.~~ **Non-organic breeder stock may be used to produce organic offspring if the breeder stock is managed organically during the last third of pregnancy. Once such breeder stock is used to produce organic offspring it:**

- (i) **Must be maintained under continuous organic management,**
- (ii) **Must not cycle in and out of organic management², and**
- (iii) **May nurse their organic offspring³,**
- (iv) **Male breeder stock may be used at any time, and are not required to be managed organically.**

(b) The following are prohibited:

(1) Livestock or edible livestock products that are removed from ~~an organic operation~~ **production** and subsequently managed ~~on a non-organically operation~~ **or have their products sold, labeled, or represented as organic.**

(2)-Breeder or dairy stock that has not been under continuous organic management since the last third of gestation may not be sold, labeled, or represented as organic slaughter stock.

² Consistent with the 2003 NOSB recommendation approved by the full board, OTA recommends clarification to prevent the re-transition of breeder stock in and out of organic production. Requiring breeder stock to be kept in organic management once brought onto an organic operation would simplify tracking of animals and prevent a scenario where the same animal is in and out of organic management based on where she is at in the gestation cycle.

³ In the Q&A on the NOP website, NOP has clarified that organically managed breeder stock can nurse her own calf, but cannot be milked and that milk fed to groups of calves or sold as organic. OTA recommends codifying this in the regulation.

(c) The producer of an organic livestock operation must maintain records sufficient to preserve the identity of all organically managed animals and edible and non-edible animal products produced on the operation