

ATTACHMENT A

Organic Farmers Association Policy and Supporting Information on the Origin of Livestock

Certifying agents are interpreting the definition of what makes a dairy cow capable of producing organic milk differently, as well as what constitutes an entire, distinct herd. For example: Some organic herds are allowed to have continuous or more than one period of transition of conventional dairy animals while others are only allowed a year to transition all their livestock.

As a result, there is certifier shopping by producers; economic inequality between operations and inconsistency in interpreting organic regulations that has caused a loss of consumer confidence in the organic milk certification process and contributed to the glut of organic milk that has caused pay price to drop by up to twenty-five per cent.

Position: OFA supports the reactivation of the 2015 Origin of Livestock Proposed Rule and the publication of a Final Rule in 2019 that revises the current regulation so that it aligns with the principles expressed in the preamble of the December 21, 2000 Federal Register National Organic Program Final Rule (page 80570). OFA supports the inclusion of the following in the Final Origin of Livestock Rule:

1. A producer as defined by USDA NOP may transition bovine dairy animals into organic production only once.
2. A producer is eligible for this transition only if they convert an entire established non-organic dairy operation¹ to organic production at the same geographic location within a defined 12-month period. Once that transition has started, other non-organically certified animals cannot be added to the herd.
3. This transition must occur over a continuous 12-month period prior to production of milk or milk products that are to be sold, labeled, or represented as organic.
4. A producer must not transition any new bovine dairy animals into organic production after the end of the 12-month transition period.
5. A producer is not eligible for the exemption if it has been used by a Responsibly Connected² person who has a 20% or more ownership share in their legal entity.
6. The certifying entity will file an organic system plan prior to the start of transition and the transition process is overseen by the certifier as part of their accountability.
7. Transitioned animals must not be sold, labeled, or represented as organic slaughter stock or organic bovine dairy animals.

¹ Suggested definition: Dairy Operation. An operation that is currently producing conventional or certified milk or milk products or is applying for certification of dairy animals to produce organic milk or milk products.

² §205.2 Terms defined has the following definitions:

- **Producer.** A person who engages in the business of growing or producing food, fiber, feed, and other agricultural-based consumer products.
- **Person.** An individual, partnership, corporation, association, cooperative, or other entity.
- **Responsibly Connected.** 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.

8. If organic management of the dairy animal, starting at the last third of gestation or at any other time it has been organic, is interrupted, the animal cannot be returned to organic certification.³
9. Split bovine conventional and organic milking herds at the same location are prohibited.
10. Once the regulation is finalized all entities will be required to immediately meet the requirements of the Final Rule. There will be no implementation period.

Supporting Information

Proof of inconsistent interpretation of the Origin of Livestock regulation

A stated purpose of the Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6501-6522) is to assure consumers that organically produced products meet a consistent and uniform standard (7 U.S.C. 6501). In 2013 the Inspector General determined that this was not the case with the Origin of Livestock: *“For example, our interviews with six certifying agents disclosed that three of the six allowed organic herds to continue to be transitioned and producers to add cattle to organic herds while the remaining three do not allow the additional conversion of conventional cattle to organic status. In addition, we identified one instance of a large dairy producer asking its certifying agent to allow them to purchase conventional cattle and transition these cows into an organic herd or be forced to switch certifying agents in order to gain approval for continual transitioning.”*⁴

Additionally, in comments to a Proposed Rule in 2006 USDA report that⁵: *Commenters stated that at least nine U.S.-based certifying agents were requiring the dairy operations they certified (approximately 1,100 certified and 150 transitioning operations) to manage all replacement dairy animals organically from the last third of gestation. This accounted for roughly 50% of the organic dairy operations at that time. Other certifying agents were allowing the other approximately 50% of dairy operations to transition conventional animals to organic on a continual basis. Commenters stressed that a main purpose of the OFPA was consumer assurance that organically produced products met a consistent standard and that the current origin of livestock standard needs further specificity to meet that purpose.*

The 2000 Final Rule and NOSB recommendations

The principles outlined in the preamble of the December 21, 2000 Federal Register National Organic Program Final Rule (page 80570), can guide OFA’s proposal for providing consistent standards. They strongly support a “systems” approach to organic production. Continuous introduction of conventional dairy replacement animals undermines, and is contrary to, a systems approach.

The preamble includes the following statements:

- After the dairy operation has been certified, animals brought on to the operation must be organically raised from the last third of gestation.

³ Change in regulation: §205.236 (b)(1) “Livestock or edible livestock products that are removed from **organic management** ~~an organic operation~~ and subsequently managed ~~on a non-organically operation~~ may be not sold, labeled, or represented as organically produced.” This would not supersede Temporary variances §205.290.

⁴ National Organic Program –Organic Milk Operations - Audit Report 01601-0002-32

⁵ National Organic Program; Origin of Livestock 2015

- The conversion provision also rewards producers for raising their own replacement animals while still allowing for the introduction of animals from off the farm that were organically raised from the last third of gestation. This should protect existing markets for organically raised heifers while not discriminating against closed herd operations.
- ...a whole herd conversion is a distinct, one-time event... 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 conversion provision cannot be used routinely to bring non-organically raised animals into an organic operation.

Between 1994 and 2006, the NOSB made six recommendations regarding origin of dairy animals. In June 1994, the NOSB recommended that dairy stock be fed certified organic feeds and raised under organic management practices for not less than 12 months prior to the sale of their milk as organic. In March 1998, the NOSB provided a second recommendation reaffirming its 1994 recommendation on the source of livestock and that livestock comprising part of a mixed crop/livestock operation should qualify to be certified organic at the end of the transition period.

On June 12, 2000, the NOSB stated that livestock should be under organic management for one full year prior to the sale of organic milk with an exception for conversion of an entire, distinct herd into organic production. The NOSB laid out the following three conditions for conversion of a herd into organic production:

1. For the first nine months of the final twelve-month dairy herd transition period, animals must be fed at least 80 percent feed that is either organic or self-raised transitional feed. The remaining 20 percent could be nonorganic during those nine months.
2. For the final three months, animals must be fed 100 percent organic feed.
3. Once a dairy operation has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation, except that transitional feed raised on the farm may be fed to young stock up to 12 months prior to milk production.

The Final Rule and subsequent regulation followed the NOSB recommendations. The organic regulations state that organic milk must be from animals that have been under continuous organic management⁶, beginning no later than 1 year prior to the production of organic milk, the regulations allowed an exception⁷. If an entire distinct herd of cattle was converted to organic production, the producer could, for the first 9 months of the year, provide dairy livestock a minimum of 80 percent organic feed and then provide 100 percent organic feed for the final 3 months.⁸ This provision became known as “the 80/20 exemption.”

⁶ Organic management is the care and maintenance of a dairy cow in accordance with USDA organic regulations, covering such things as feed, grazing, healthcare, living conditions, access to the outdoors, and confinement.

⁷ Dairy animals. Milk or milk products must be from animals that have been under continuous organic management beginning no later than 1 year prior to the production of the milk or milk products that are to be sold, labeled, or represented as organic, Except

⁸ That, when an entire, distinct herd is converted to organic production, the producer may, provided no milk produced under this subparagraph enters the stream of commerce labeled as organic after June 9, 2007: (a) For the first 9 months of the year, provide a minimum of 80-percent feed that is either organic or raised from land included

In October 2002 and May 2003, the NOSB recommended that all replacement and expansion dairy animals be raised as organic from the last third of gestation onward. The NOSB believed that this would ensure consistency with the current regulations. The NOSB further advocated that the NOP issue guidance in the form of questions and answers to clarify the management of breeder stock to the industry.

On May 12, 2006, the NOSB commented on the “Revisions to Livestock Standards Based on Court Order (Harvey v. Johanns) and 2005 Amendment to the Organic Foods Production Act of 1990” proposed rule published April 27, 2006 which ended the 80/20 exemption with a Final Rule in 2007. The NOSB amended its May 2003 dairy replacement recommendation to read: “Once a dairy operation has been converted to organic production, all dairy animals, including all young stock whether born on or brought onto the operation, shall be under organic management from the last third of the mother’s gestation.”

Another related provision of the regulations states that once an entire, distinct herd has been converted to organic production, all dairy animals shall be under continuous organic management, as of the last one-third of the gestation period⁹. In other words, no other cows can be converted into a herd that was originally converted using the 80/20 exemption.

In October 2006, NOP published guidelines meant to clarify the existing origin of livestock rule.¹⁰ The guidelines allowed organic milk operations that were certified organic prior to October 21, 2002, or that transitioned their cattle by feeding them 100 percent organic feed during conversion, to acquire additional conventional cattle and transition them to an organic status. The guidelines prohibited organic milk operations that transitioned their cattle using the 80/20 exemption from transitioning additional cattle. This guidance document was archived by NOP on January 31, 2011, in anticipation of rulemaking to clarify the origin of livestock rule.

In 2013 the Office of the Inspector General reported that there was inconsistency in interpreting the Origin of Livestock regulation. In its reply to the report, the USDA NOP stated that they were in process of publishing a Rule to address the inconsistency of interpretation by certifiers. In 2015 a Proposed rule was published and comments taken. In February 2018 the USDA removed the publication of a Final Rule from its work plan.

In response to criticism about the inconsistent interpretation of the existing regulation, the USDA NOP have said that the existing language is not specific enough to sustain a legal challenge to a non-compliance.

The following solutions to the problems raised by the current interpretation of the Origin of Livestock have been suggested but are neither practical nor timely:

in the organic system plan and managed in compliance with organic crop requirements; and (b) Provide feed in compliance with § 205.237 for the final 3 months.

⁹ (iii) Once an entire, distinct herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation.

¹⁰ NOP 503: Dairy Animal Acquisition under the NOP Regulations

1. Termination of the OFPA provision that allows the transition of conventional animals to organic. This would require Congressional action which is not a viable proposition at this time.
2. Through an add-on label that shows that the milk labeled would be only from dairy livestock that were organic from the last third of gestation. This would be difficult to accredit, validate and enforce and would undermine the national power and recognition of the NOP Seal.
3. Some have said guidance might work but the NOP has said they cannot legally enforce non-compliance of any guidance document. They have also said they cannot enforce the current wording of the regulation and have allowed inconsistencies and abuse of the regulation that includes allowing organic calves to be reared conventionally and then return to organic.

Regulation is the only practical way forward. In order to move forward quickly we petition the USDA NOP to reactivate the 2015 Proposed Rule and immediately make it into a Final Rule, taking into account the comments already submitted in response to the Proposed Rule. Any request to reactivate the Proposed Rule and put it on the 2019 work plan must not include any suggestions that diverge dramatically from the recommendations the Proposed Rule has made otherwise the NOP would have to start the process from the beginning with another Proposed Rule and comments, causing years of delay and the degradation of the Organic Seal.

OFA's position addresses all the issues identified by producers and others that are the source of confusion and inconsistency in interpreting the current regulation. While some may say that these recommendations are too prescriptive, the existing situation has such widespread differences in interpretation that the language of any Final Rule needs to be specific to withstand any legal challenges of non-compliance.

All the recommendations that are part of the OFA position were included in comments made in response to the 2015 Proposed Rule and will therefore meet the requirement that they are not significant changes to the Proposed Rule.

The intent of the OFA position is to ensure that the transition exemption that allows for a conventional herd to be transitioned to organic production follows the intent of the original regulation and the subsequent recommendations of the NOSB.

- OFA's position will stop continuous transition of conventional dairy livestock and stop the exemption from being used to combine multiple transitioned herds to form one operation. It will also stop first calf heifers and young cows being transitioned from conventional production and then being sold to an existing organic dairy therefore providing a cheaper, quicker alternative to raising organic replacements under organic management.
- OFA's position will ensure that the whole transition happens over a twelve-month period and under the supervision of a certifier as part of the producers Organic System Plan. It will stop the practice of adding conventional animals and extending the transition period.
- OFA's position will stop the sale of transitioned animals not raised in organic production from the last third of gestation being sold as organic dairy animals that can be used to produce organic milk. It will not stop transitioned animals retaining their organic status if they are moved to a different location but under the same ownership. This does not affect

the asset value of the animal as its initial value was as a conventional animal and any cost of transitioning the animal was reflected by the higher pay price. For family members who were part of the ownership of the transitioned entity who want to start their own operation, they will need to purchase organically certified animals under organic production from the last third of gestation as either young stock or milking animals. They would not be eligible to transition conventional animals. While this may seem unfair to new entrants or complicate succession planning it is required to end abuse that undermines the integrity of organic certification for all operations.

- OFA's position will stop the practice of having an organic and conventional dairy operation at the same location. While the practice of a split operation may be practical with other commodities it is very difficult to audit and ensure that organic dairy product (raw milk) is not mixed with non-organic product. This will prevent any abuse or the perception of abuse.
- OFA's position supports economic equity for all organic dairy operations and ensures continued consumer confidence in the 3rd party certification process.
- OFA's position will increase the value of organically certified livestock (from the last 3rd of gestation) which currently have no premium as most are sold on the conventional market. This will reflect the equity and sweat equity that organic producers have invested in their organic genetics and long-term commitment to organic integrity.