

May 12, 2006

Mark Bradley, Associate Deputy Administrator
USDA-AMS-TMP-NOP
Room 4008-South Building
1400 Independence Avenue, SW
Washington, DC 20250-0020

Comments on: Docket TM- 06-06-PR

Dear Mark,

We would like to thank the USDA for posting this proposed rule to address the court mandated regulatory changes of June 9, 2004 as well as those required due to Congressional change to the OFPA of Nov. 10. 2005. As representatives of USDA accredited certification agencies charged with verifying that the regulations are met, we believe that the regulations must be clear, consistent and that the intent is well understood. However, we are concerned that the language as proposed is not clear and will cause inconsistent implementation of the USDA standard for organic production.

As we previously have written in our letter of March 24, 2006, we support a uniform requirement for replacement dairy animals to be managed organically from last third of gestation. This is the current practice for certification by the large majority of agencies certifying organic dairy in the US, including NOFA-NY, PCO, MOFGA, MOSA, Oregon Tilth and VOF, who currently certify at least **891 dairy farms**, with approximately another **140 farms in transition**.

We offer the following suggested changes:

§ 205.236 Origin of livestock.

2) *Dairy animals* - conversion of herds. 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, That, 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.

(3) *Dairy animals* - replacement stock. Once an operation has been certified for organic dairy production, all dairy animals, including all young stock whether subsequently born on or brought onto the operation, shall be under organic management from the last third of gestation.

Discussion

Transitional Feed

We support the inclusion of the Congressional language regarding use of crops and forage under third year of organic management as feed for dairy animals converting to organic. We agree this will provide equity for dairy farmers who otherwise may be unfairly burdened with a four-year transition (due to three years need to convert crop and pastureland, plus a 12 month requirement for organic feed). However, we are concerned that the language as inserted may permit use of crops and forage produced during the first two years of transition, and suggest a punctuation

change to indicate that crops and forage must come from land that is in the third year of transition. Other land that is not in third year transition state may also be included in the organic system plan, as well as stored crops and forage from previous harvests.

Origin of Livestock and Replacement Stock

We appreciate the retention of the clause now numbered 205.236(a)(2)(i) that requires organic management from last third of gestation. However, the explanation given in the Q and A states that the subparagraph applies to producers who convert “an entire distinct herd.” The Q and A implies that a producer that does not convert “an entire distinct herd” does not have to abide by this requirement.

It appears that the proposed regulation continues to present two ways (paths) that a dairy may follow to certify an animal or herd for the production of organic milk:

1. Organic management for one year, or
2. Via the exception, feed rations may include crops from land in the third year of transition.

Once the animal is converted through one of the two paths, it is not clear who is subject to the provision under (i):

1. All certified dairy producers?
2. Only those producers that transition via the exception?
3. Only those producers that transition an “entire distinct herd”?

The proposed retention of the term “entire distinct herd,” which is nowhere defined in the rule, causes problems. This phrase no longer appears in introductory paragraph of 205.236(a)(2), and so the basis for the restriction is unclear. The Congressional amendment did not use this term, and instead referred to “dairy farm” and “dairy animals.” The regulation elsewhere describes certification of “operations” not “herds” (205.100). Therefore, it is consistent with Congress, OFPA, the NOSB recommendation of May 2003, and the existing regulations to change “entire distinct herd” to “operation” to clarify that all operations must manage their young stock organically; no matter what path the operation chose to become certified.

Multiple Interpretations

We believe the proposed wording will create many difficulties for uniform interpretation by certifiers. It is critical that the regulation be clarified with regard to what a producer must do after transition in terms of raising or purchasing replacement animals. The proposed rule appears to permit the following scenarios, and raises some further questions:

- a. Farm A buys conventional animals as “an entire distinct herd” and converts them with one year of organic management. Must all subsequent animals born on the farm be organically managed? Can new non-organic replacement animals be purchased and converted individually after 12 months of organic management?
- b. Farm B establishes a split operation, in that calves born from certified animals are maintained on conventional feed and with conventional methods on the farm until 12 months of age. Can these animals then be transitioned to organic with one year of organic management prior to milking?
- c. Farm C sells all calves born from certified animals to a conventional calf raising business, and buys the animals back one year prior to producing organic milk (with the intent to convert the animals with one year organic management for organic milk production). If the animals are not “an entire distinct herd” is this permitted?

- d. Farm D has transitioned an “entire distinct herd.” Later, they buy individual animals from a “calf ranch” that buys conventional calves, raises them conventionally for 12 months, then converts them to organic after 12 months of organic management. Can these animals be purchased by Farmer D?
- e. Farm E buys a herd of already certified animals and starts an organic dairy operation. They claim that they are not bound by the last third requirement because they did not “convert” their herd to organic production—it already was converted. Can they subsequently buy conventional youngstock and transition them for a year as their replacement animals?
- f. Farm F, a long time conventional dairy farm, decides to transition half their herd to organic production and leave half under conventional production. Since they are not transitioning their entire herd, do they not have to follow the last third of gestation requirement?
- g. Farm G converts their entire, distinct herd to organic production. Is this the only scenario that entirely triggers the last third requirement?

As you can see, the potential exists for many interpretations of this language and continued perpetuation of a non-uniform standard for management of young animals. This will make enforcement of the regulation extremely difficult, and highlights the importance of a clear non-ambiguous regulation that can be uniformly applied by the certification agencies.

Other consequences

The lack of requirement for organic young stock will harm the market for organic heifers, and diminish demand for organic feed. It may allow young stock to be managed non-organically on a certified organic farm as part of a split operation. This will create continuing record keeping burdens and make verification of appropriate management extremely difficult. It will also decrease the supply of organic slaughter animals from dairy culls, and make tracking these animals more complex.

It is also potentially harmful to consumer demand since it allows for continuous importation of non-organic replacement animals, which may have been treated with antibiotics, hormones and non-organic feed. This is incorrectly represented in your preface to the proposed rule (FR 24823). Dairy farms do continually replace a certain percentage of their animals each year. Without a consistent requirement for animals managed organically since the last third of gestation, a substantial percentage of the animals producing milk on organic dairy farms could have been fed prohibited substances, including genetically engineered feeds, blood, animal fat and other slaughter by-products, and treated with prohibited medications for the first year of their lives. This is certainly contrary to consumer expectations as described in recent marketing studies presented at the recent USDA sponsored Organic Dairy Symposium.¹

Conclusion

A NOP regulation that continues to allow certain operations to treat young stock non-organically, while other operations (who have converted an “entire distinct herd”) must raise animals organically from last third of gestation, is inherently unfair, and conflicts with the stated purpose of OFPA, “to assure consumers that organically produced products meet a consistent standard”

¹ <http://www.ams.usda.gov/nop/PublicComments/DairyPastureSymposium/MaryEllenMolyneux.pdf>,
<http://www.ams.usda.gov/nop/PublicComments/DairyPastureSymposium/MargaretWittenbergPresentation>

(7USC 6501(2)). The OFPA states that animals must be managed organically “not less than 12 months” prior to milk production, it also clearly states that “The National Organic Standards Board shall recommend to the Secretary standards in addition to those in paragraph (1) for the care of livestock to ensure that such livestock is organically produced” (7 USC 6509(d)(2)).

Please take this opportunity to create fair and consistent regulations that “assure consumers that organically produced products meet a consistent standard.”

Thank you for your consideration and for your dedication and work on these issues.

Sincerely,

USDA Accredited Certification Agencies:

Leslie Zuck, Executive Director; Emily Brown Rosen, Materials Manager, Pennsylvania Certified Organic, Centre Hall PA

Nicole Dehne, Certification Director, Vermont Organic Farmers, LLC, Richmond VT

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