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The Northeast Organic Dairy producers Alliance (NODPA) submits these comments on the Proposed Rule for the Origin of Livestock.

Since its formation in 2002, NODPA has been submitting comments directly to the USDA on its proposed regulations. One of the first topics that NODPA sent comment on, in 2003, was the Origin of Livestock. Since 2003 the organic dairy industry has matured and the number of organic dairy breeding replacements has increased but with most sold on the non-organic market. Our members believe that the intent of the origin of livestock conversion provision is to assist producers in transitioning to organic, but should not be routinely used to bring non-organically raised animals into an organic operation. NODPA recommends revising the origin of livestock proposed rule to align more closely with the principles outlined by the authors of the organic rule, as expressed in the preamble of the December 21, 2000 Federal Register National Organic Program Final Rule.

NODPA which is the largest organic dairy producer organization in the country with a membership of eight hundred and thirty six organic dairy producers in the Eastern USA. NODPA's mission is to “**enable organic dairy family farmers, situated across an extensive area, to have informed discussion about matters critical to the well-being of the organic dairy industry as a whole.**” NODPA is not aligned with any one processor or cooperative and therefore is able to represent the views and needs of many different farmers.

**Implementation:** As mentioned above this proposed regulation has been discussed for the last twelve years and the industry has been consulted and is aware of the general direction that the final rule will take. We recommend that all producers/operations that have started their transition will be allowed to finish under the existing regulations. The new regulation will be applied to those producers/operations that wish to start their transition after the regulation is made final. We do not recommend any implementation period as the new requirements will not make any changes necessary to the organic system plans currently in use.

#### **NODPA's Mission**

*To enable organic dairy family farmers, situated across an extensive area, to have informed discussion about matters critical to the well-being of the organic dairy industry as a whole.*

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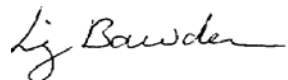
Nora Owens

This proposed rule does provide clarity and a single standard for the one time exemption, with specificity on what the transitioned animals and their progeny can be used for. NODPA's recommendations for changes to the proposed rule would result in many benefits including, among others: 1) consistency with OFPA requirements and the organic rule; 2) fairness across a full spectrum of operations; and 3) premium prices for organic dairy animals (at this time there is often little, if any, premium in the market place).


Thank you for opportunity to comment on this Propose Rule and we look forward to your response to our comments

Thank you for your consideration. Please contact Ed Maltby if you require any more information.

Sincerely



NODPA Board Chair and New York organic dairy farmer



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## **NODPA comments on the Origin of Livestock Proposed Rule**

The preamble of the December 21, 2000 Federal Register National Organic Program Final Rule contains several statements (page 80570) that frame the principles the Rule Writers intended regarding dairy herd conversion and dairy replacement animals, including the following:

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

These Preamble statements coalesce to 3 principles:

1. The opportunity for a producer to convert a conventional herd of dairy animals to organic production is a onetime event per producer. This is clearly mentioned in two separate statements.
2. Once the operation has been certified, all animals brought onto the farm must be organic from the last third of gestation. This is clearly stated in the first and fourth statements.
3. There is no allowance to move transitioned animals from the operation on which they were transitioned to another certified organic operation. The preamble states specifically that the provisions allow “for the introduction of animals from off the farm that were organically raised from the last third of gestation”, making no mention of also allowing the introduction of transitioned dairy animals from off the farm.

NODPA recommends that the proposed rule on origin of livestock follow these principles that were outlined in the Preamble.

Using these principles to revise the origin of livestock, requiring that all dairy replacement animals be organic from the last third of gestation, would have the following benefits:

1. The standard would meet the requirement of OFPA, would be consistent with the Rule Preamble, would be consistent with the standing NOSB Livestock Committee interpretation, and would be consistent with the public comment received on the topic.
2. The standard would be consistent and fair across the full spectrum of operations, no matter how or when operations transitioned or whether the replacement animals were farm raised or purchased.
3. It will mean that organic dairy animals of all ages will carry a premium price, as should be the case. At this time there is often little, if any premium, in the marketplace for organic dairy livestock and certified organic dairy producers often sell excess young stock into the nonorganic market for lack of an organic market.

4. Requiring that all replacement dairy animals, both purchased and farm-raised, be fed and managed organically will increase the demand for organic feeds, providing a larger market and greater incentive for grain and forage growers to transition to organic production.
5. Certified organic dairy producers would have to buy animals that had been under organic management from the last third of gestation, but could not buy any animals that had been transitioned to organic. This would put all operations on a level playing field, following the same standard.
6. Organic heifer ranches would have to have brood cows that are managed organically during the last third of gestation (3 months) to supply them with calves or buy calves that are organic from the last third of gestation.
7. If the organic market needs more milk, then it would be filled by:
  - a) Established, discrete non-organic dairy herds in conjunction with the land resources that sustain it transitioning to organic production
  - b) Existing certified organic dairy operations expanding through internal herd growth
  - c) The purchase of excess last third of gestation stock from other operations or
  - d) Non-organic brood cows that are managed organically during the last third of gestation (3 months) to supply organically certifiable calves.
8. On transitioning dairy operations, the first animals that would qualify for sale as organic dairy cattle replacement stock would be those born 3 months (last third of gestation) after the start of 100% organic feeding and management.
9. Requiring organic management of calves supports a “systems” approach to organic dairy production and requires that nutritionists, veterinarians, and producers improve organic calf rearing practices.

§ 205.2 Terms defined.

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

NODPA recommends changes to the definition for “dairy farm”. In everyday dairy jargon, “milking parlor” refers to a specific type of facility for milking dairy livestock but is not a broad, all-encompassing milking facility descriptor. Many organic dairy farms milk in facilities that are not considered “milking parlors”.

The wording dairy “farm” is incongruous with the wording in the rest of the Rule, where the term “operation” is consistently used, rather than “farm”. In addition, putting the minimum limit of one lactating animal would seem to open the door to, for example, an operation with a thousand heifers and one lactating animal (who could be used as a nurse cow) to be set up for a dairy transition exemption, with no intention of producing organic milk for sale.

NODPA recommends the following definition to replace the current one for “dairy farm”:

§ 205.2 Terms defined.

1. **Dairy farm. ~~A premises with a milking parlor where at least one lactating animal is milked.~~**

1. **Dairy Operation.** An operation that is certified or is applying for certification of organic dairy animals and production of organic milk or milk products.

**If this change is made, then wherever the word “farm” appears in the rest of the text would need to be revised to dairy operation. § 205.236 (a)(2)**

**§ 205.236 (a)(2)**

NODPA proposes that a producer with an established conventional herd can use the one time exemption to transition their whole herd in order to maintain the genetics and inbred immunities that the herd has developed but only if the owner(s) have not held more than 10% ownership share of an organic operation that has already used the one time exemption. In the proposed rule, NOP ties the one-time transition of a conventional dairy herd to organic to the producer. The proposed rule states: “A producer is defined under the regulations as ‘a person who engages in the business of growing or producing food, fiber, feed, and other agricultural-based consumer products’ (section 205.2). The regulations also define a person as an ‘individual, partnership, corporation, association, cooperative or other entity’ (section 205.2).” While we understand that the intent of tying the transition exemption to the producer is to prevent organic dairies from transitioning multiple herds, NODPA believes that the intent would be more directly and effectively accomplished by tying the transition to the “responsibly connected person(s).” 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 or accreditation 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 the same entity (producer/corporation) from setting up Limited Liability Corporations (LLC) as new start-ups to transition multiple conventional herds to organic, thereby circumventing the rule. Conversely, by attaching the exemption to a producer, as defined in the draft rule, would allow any newly certified entity (individual or corporation) to be eligible for the one-time transition of a conventional dairy herd each time they reconfigured their business arrangement. This would allow businesses to establish new start-up dairy operations as new LLCs, qualifying them for an additional transition exemption.

In sum, attaching the one-time transition exemption to the “responsibly connected person(s)” would more effectively fulfill a primary goal of the proposed rule—to prevent organic dairies from transitioning multiple conventional herds or animals. It would do so in a manner that would preclude producers from circumventing the rule.

There is no reason why a new start-up should not buy organically certified cows as the organic dairy industry is now mature enough to have enough dairy replacements. The Preamble does not mention an option of buying and transitioning conventional heifers as a means to start a new organic dairy herd. It states that the one time transition is for an “established, discrete dairy herd in conjunction with the land resources that sustain it”.

**§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.

The Proposed Rule language makes it possible for a “Person” to use the one time exemption multiple times because of the ownership structure of the “Producer.” The use of the exemption has been defined many times in the proposed Rule as being just once. However, the 205.2 wording seems to indicate that an individual could be a member of multiple LLCs or corporations which could each claim their own transition exemption. Definitions or wording needs to be tightened up to ensure this can't happen.

NODPA recommends the following changes:

**§ 205.236 (a)(2) Dairy animals.** A producer as defined in §205.2 may transition dairy animals into organic production only once. A producer is eligible for this transition only if ~~the producer starts a new organic dairy farm or they convert~~ ~~converts~~ an established, discrete nonorganic dairy farm to organic production. A producer must not transition any new animals into organic production after completion of this one-time transition. **A producer is not eligible for the exemption if the exemption has been used by a Responsibly Connected person who is part of its business ownership.** 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, and meet the following conditions:

**§ 205.236 (a)(2) (ii)**

In order to ensure that the transition is conducted according to the NOP regulations, NODPA recommends that the organic system plan is filed prior to the start of transition and the transition process is overseen by the certifier as part of their accountability. We recommend the following changes:

**§ 205.236 (a)(2) (ii)**

**Before the start of ~~During~~** the 12-month period, the producer should describe the transition as part of its organic system plan and submit this as part of an application for certification to a certifying agent, as required in §205.401;

**§ 205.236 (a)(2)(viii) NODPA recommends that this section is deleted.** Allowing transitioned animals to be sold as certified organic creates a loophole that will be exploited. Transitioned animals are, technically, not organic. A transitioned animal is certified to produce organic milk, but cannot be sold for organic slaughter, and shouldn't be allowed to be sold as an organic dairy animal. If culled from the herd, a transitioned animal should be sold into the conventional market. There will be no decrease in the asset value to the producer as the original value of the livestock was as a conventional animal and the producer has recouped any expense incurred in transitioning to organic certification through the premium received for organic milk produced. A transitioned animal, by definition, did not have organic management throughout its life. It did not have equal inputs to an animal that was raised on organic feeds and management (virtually always more costly than non-organic inputs) its whole life and therefore should not have as high an economic value as dairy stock that are organic from the last third of gestation. To equate transitioned dairy animals to last third organic animals de-values those animals raised organic from the last third of gestation. It discriminates against the producers who had to invest more money in the raising of the last third of gestation dairy animals and unfairly rewards the producer

of transitioned animals. This unfair economic advantage of transitioned animals is what has driven the abuse of the current rule and it will continue to drive abuse of a new rule if the door on transitioned dairy replacement animals being equal to last third dairy animals is not tightly shut.

Tracking of transitioned animals versus last third of gestation animals will require no more record keeping or work for producers or certifiers than should already be done. Organic slaughter stock and dairy stock will become the same category and transitioned dairy animals that will not be able to be sold as either organic slaughter or dairy replacement stock will be tracked separate.

§ 205.2 Terms defined: NODPA recommends the following changes to the definition of transitioned animals

- 1. Transitioned animal.** A dairy animal that was converted to organic milk production in accordance with §205.236(a)(2); offspring borne to a transitioned animal that, during its last third of gestation, consumes third year transitional crops; or offspring borne during the one-time transition exception that themselves consume third year transitional crops. Such animals must not be sold, labeled, or represented as organic slaughter stock, **organic dairy animals** or for the purpose of organic fiber.

**§ 205.236 (a)(2)(ix) NODPA recommends the following changes to this section for the reasons stated above:**

After the 12-month period ends, any new dairy animal brought onto a producer's dairy farm(s) for organic milk production must be an animal under continuous organic management from the last third of gestation ~~or a transitioned animal sourced from another certified organic dairy farm.~~

**§ 205.236 (a)(3) Breeder Stock:**

**§ 205.2:Breeder Stock are defined by USDA as: Breeder stock. *Female livestock whose offspring may be incorporated into an organic operation at the time of their birth.*** The proposed Rule allows for nonorganic breeder stock to be brought onto an organic operation at any time. Having non-organic lactating breeder stock on a certified organic dairy operation is very problematic. Since dairy livestock have been genetically selected to produce far more milk than their calf will consume, there is too great a likelihood that lactating breeder stock's milk will advertently or inadvertently end up either in the tank with certified organic milk or be used to feed additional organic calves. It is unrealistic to think that a lactating breeder stock's milk will be disposed of consistently if allowed to stay on the certified dairy operation indefinitely. Since the one time opportunity for dairy herd transition is allowed, this provides a means for entry into organic dairy production. It is very understandable and right that a breeder stock allowance be in place for non-dairy livestock as those operations have no transition allowance.

NODPA recommends that there is no allowance for breeder stock for dairy. That eliminates the very real possibility of adulteration of certified organic milk with non-organic milk yet allows the introduction of new genetics to a dairy operation. Dairy operations also have the availability of many breed's genetics through artificial insemination.

If the allowance for breeder stock is retained to enable non-organic breeder stock to be brought onto an organic operation, with the exception of dairy, and be managed organically for at least the last third of gestation to provide a source of newborns that would be organic from the last third of gestation, the Proposed Rule correctly states that the newborn receives the colostrum from its mother and colostrum is essential to the future growth and health of the newborn, especially within an organic system.

Any breeder stock brought onto a certified operation will not be able to be converted by that operation and the stock will retain its non-organic status.

NODPA realizes the important role that breeder stock can play in developing the genetic base of the livestock operation but breeder stock can only be used for this purpose, not as a back door for rapidly increasing the number of livestock that is part of the production of organic products. This could be especially true for the hog industry that has multiple newborns in the litter and the ability to breed at any time of the year. For this reason we propose that the definition of Breeder Stock be changed to:

**§ 205.2:Breeder Stock are defined by USDA as: Breeder stock. *Female livestock whose offspring may be incorporated into an organic operation at the time of their birth to improve the genetics of the operation not to be used purely for production purposes.***

We also propose that the introduction of breeder stock is a one-time occurrence for the breeding animal. If the breeding animal can give birth and feed the now organic newborn until they are weaned and then is allowed to return to nonorganic production until they have reached the last third of gestation of their next offspring this would undermine all the basic concepts of organic herd health. Organic herd health is based on building natural immunities by production practices and strengthening the immune system of all animals, especially newborns. Transitioning breeder stock in and out of organic management would go against this basic concept.

#### **Recommended changes to this section:**

**§ 205.236 (a)(3) Breeder stock. Livestock used as breeder stock may be purchased from a different nonorganic operation onto an organic operation at any time, Provided, That the following conditions are met:**

- (i) Such breeder stock must be brought onto the operation no later than the last third of gestation if its offspring are to be raised as organic livestock; and**
- (ii) Such breeder stock must be managed organically throughout the last third of gestation, the lactation period and be maintained under continuous organic management while on the organic operation during which time they may nurse their own offspring.**
- (iii) The reason for the introduction of breeder stock and the number introduced into the operation is accounted for in the organic systems plan.**
- (iv) A producer is eligible to transition breeder animals only once to produce organic offspring, sourcing these animals from purchased nonorganic breeder stock. Once giving birth to organic animals, the breeder stock must be maintained under continuous organic management. If organic management is interrupted, this breeding animal can no longer produce organic offspring during its lifetime.**

#### **(b) The following are prohibited:**

- (1) Female nonorganic dairy breeder stock brought onto organic dairy operations.**



- (2) Livestock, edible livestock products, or nonedible livestock products such as animal fiber that are removed from an organic operation and subsequently managed on a nonorganic operation may not be sold, labeled, or represented as organically produced.**
- (3) Breeder stock, dairy stock, or transitioned animals that have not been under continuous organic management since the last third of gestation may not be sold, labeled, or represented as organic slaughter stock.**
- (c) The producer of an organic livestock operation must maintain records sufficient to preserve the identity of all organically managed animals, including whether they are transitioned animals, and edible and nonedible animal products produced on the operation.**
- § 205.236 (a)(3).**

### **Recordkeeping**

Recordkeeping is not well defined except by reference to other parts of the rule and this area needs more clarity in a final rule. There is the question about communication between different certifiers about the past history of producers, and the need for some degree of uniformity in certificates of organic certification, especially important for organically certified auctions. The fact that a transitioned animal and any progeny fed third-year transitional crops can never be sold as organic beef will need specific attention in any record-keeping and on-farm accountability. NODPA's understanding is that there are certifiers who still don't require animal lists for dairy stock to be submitted at least annually. To be assured of compliance there needs to be close tracking and scrutiny of all animals on a certified dairy operation. Without a definitive and required paper trail (that is more than given just a quick once over by an inspector) there is far too much opportunity for fraud as animals can easily be moved in and out of a herd. NOP needs to require certifiers to require detailed animal lists from all dairy operations. For each animal, the list must include their unique ear tag or a tattoo number, date of birth, dam, breed, whether animal was transitioned or fully organic from last third of gestation, whether purchased or farm raised, and date and documentation of disposition. If certifiers don't have that requirement and follow-through, they should not be accredited to certify dairy operations.

### **§205.2 Terms Defined**

Audit trail:

Documentation that is sufficient to determine the source, transfer of ownership, and transportation of any agricultural product labeled as "100 percent organic," the organic ingredients of any agricultural product labeled as "organic" or "made with organic (specified ingredients)" or the organic ingredients of any agricultural product containing less than 70 percent organic ingredients identified as organic in an ingredients statement.

### **Instruction on Recordkeeping approved by USDA NOP July 22, 2011**

#### **5.2 Organic Livestock Producer Records**

##### **1. Origin of Livestock Records**

- a. Breeding, birthing, and weaning records (e.g. calendar, chart, notebook, veterinary documents)
- b. Invoices, receiving records, and organic certification verification for all purchased animals

NODPA recommends the following change to Instruction on Recordkeeping 5.2 1 a

- a. Breeding, birthing, and weaning records to include at least the following: **record of all animals with their unique ear tag numbers or tattoos with their date of birth, their dam, their breed or cross breed, whether animal was transitioned or fully organic**

**from last third of gestation, whether purchased or farm raised, date and documentation of their disposition whether by sale or slaughter or natural causes. Other record keeping tools may include calendar, chart, notebook, veterinary documents.**