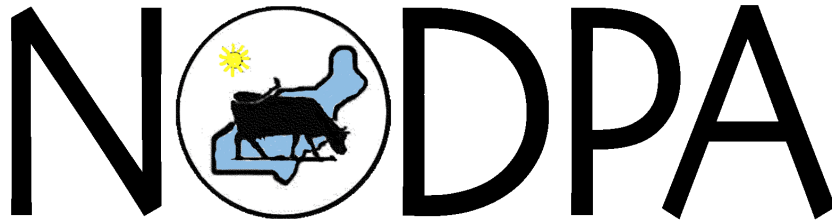


Northeast Organic Dairy Producers Alliance



April 10, 2011

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USDA National Organic Program
1400 Independence Avenue SW, Room 2640-S
Washington, DC 20250
Document Number AMS–NOP–10–0068; NOP–10–08.

Dear Lisa,

Please find attached NODPA's comments to the NOSB meeting in Seattle April 26th

NODPA is the largest organic dairy farmer organization in the country and has a membership of eight hundred and thirty six organic dairy farmers. 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 is therefore able to represent the views and needs of many different farmers in the northeast and across the country by working with its sister organizations, MODPA and WODPA, under the umbrella organization of the Federation of Organic Dairy Farmers (FOOD Farmers).

NODPA is a member of the National Organic Coalition (NOC), comprised of consumer organizations, organic farmers, organic food companies, and organic certifiers. The goal of the coalition is to assure that organic integrity is maintained, that consumers confidence is preserved and that policies are fair, equitable and encourage diversity of participation and access.

Sincerely

Ed Maltby
NODPA Executive Director

Our comments on various issues in front of the NOSB and the NOP follow. These comments are respectively submitted by Ed Maltby, NODPA Executive Director.

Livestock Committee Proposed Recommendations – Animal Welfare 3/10/2011

These comments are based on the document “NOSB Livestock Committee 2011 Proposal Combined with 2009 Recommendations Animal Welfare” and new language adopted under the Access to Pasture Rule published in 2/12/2010.

We are grateful for the NOP for compiling a single document which combines the numerous recommendations resulting from many discussion papers over the last 3 years. For most producers and many inspectors this barrage of information and change has been confusing especially when recommendations from previous NOSB committees have been changed.

While the proposals are not yet within formal rulemaking we urge the committee to suggest language to the organic community for comment that has enough detail that it will be useful in speeding the rule making process. We hope for and recommend as much discussion within the organic community through the NOSB rather than the more formal rule making process.

We fully support the need for transparency and accountability when considering the welfare of the livestock that are entrusted to our care. We strongly believe that organic animal welfare guidance and standards must be sensible, based on reasonable regulations that are determined by the realities of farming, good husbandry, grazing, natural animal behavior, and natural healing. While we know that the essence of animal welfare is already within the existing regulations, we also understand the need to recognize the demands of the market place for some definition within the regulations, highlighting the existing Animal Welfare provisions. There is an old saying that says; “It is the eye of the farmer that fattens the beast” and similarly that can be applied to animal welfare. Survey data compiled from numerous sources point out that farmers rank at the top for the best messenger for delivering an authentic communication about food quality, along with the doctors and sports personalities. In compiling new regulations we need to recognize that perception by consumers which is supported by the actual practices of farmers in providing the best possible care for their animals. We should promote the good practices of our producers rather than bring them into question. It also makes perfect economic sense to have highly functional animals as they make more profit for family farms.

We recognize the importance of requiring adequate space for animals to exhibit their “natural behavior” during the non-grazing season or during times of temporary confinement. Dairy livestock are managed in a variety of different geographic locations and under many different constraints to preserve soil and water quality. As regulations already recognize, an animal confined for breeding will have a very different requirement to one confined for calving or one confined during winter storms. An animal confined in northern Maine will need different housing than one confined in Southern California.

Rather than having highly detailed and prescriptive regulations that may result in inspectors following a check list, inspectors need to be trained to recognize conditions that are adverse to the animals exhibiting their “natural behavior” during the times they are temporarily confined. The most recent recommendations by the NOSB Livestock Committee assume a certain level of knowledge and understanding of livestock behavior during the annual inspection by inspectors on behalf of certifiers. While we applaud the large number of highly qualified inspectors that do a tremendous job with their interpretation of the health and welfare of livestock, we also have reports that some inspectors prefer to work only from a check list and have little experience and knowledge of livestock. We hope that the NOP as accreditor of the program **will increase their oversight when it comes to the qualifications of inspectors and the training that they receive from certifiers.**

§ 205.2 Terms defined

Access to the Outdoors and Outdoor Access:

We welcome a definition of access to the outdoors and outdoor access to § 205.2 Terms defined.

We welcome clarification that outdoor access is not a feeding pad as they are designed to be either concrete or hard packed materials that can withstand the pressure of livestock in wet and bad conditions. Animals do not have contact with the soil in those conditions. A few points for clarification based on producer questions:

- Under the definition, bedding is permitted but without a solid roof. Over a period of time, when it is not possible to clean the bedding as it is on soil, there could be an environmental risk to waterways prohibited under **205.239 (a) (5)** and there will no longer be contact with the soil once the area is covered in layers of bedding. This seems a contradiction and could end up as a poorly designed and maintained feedlot.
- Greenhouse barns that provide a solid roof and sides are not allowed under this definition. Are roofed barnyards that have a solid roof but no sides allowed? These buildings are designed to protect feeding areas from weather or provide shade but still allow livestock continuous access to uncovered loafing or sacrifice areas.
- Within the recommendations “**outdoor access**” and “**access to the outdoors**” are both used. Within the terms of the definition they are the same. As the intent of some of these recommendations is to write new regulations, we suggest that only “Outdoor Access” is used to avoid confusion and the impression by some that they are different.

§ 205.238 Livestock living conditions. (Mammalian section)

The most recent recommendations discard wording that was part of the 2009 recommendation, “*The producer must have a valid veterinary-client-patient-relationship (VCPR) with a licensed veterinarian, a herd health plan and maintain preventive livestock health care practices, including.*” While some disagreed with the need for a VCPR, the current wording is very open to interpretation as to the detail required and relies on the experience of the inspector rather than a veterinary professional in interpreting the “practices and procedure designed to improve health care of the livestock.” While in some cases there may be a good enough relationship and understanding between the inspector, certifier, and producer about what constitutes an adequate herd health plan, the producer should be allowed to use the recommendation of a professional veterinarian that is familiar with their operation on a regular basis. The recommendation also concentrates and uses the word ‘to improve health care’ which can be interpreted in a negative context.

We recommend that producer use a scorecard of the general health of the individual cow as a % of the whole herd, which allows for many different criteria to be used including breed, time of lactation, age, and time of year. That way if a producer is excelling in most areas, but weak in one area, they should not be penalized.

We recommend a change to § 205.238 (a) to read:

§ 205.238 (a):

The producer must establish, maintain, and describe in the organic system plan a **herd health plan that includes** practices or procedures designed to **preserve, develop and, where possible, improve the overall** health care of the livestock operation **and individual animals. The producer may elect to contract with their licensed veterinarian to verify that their herd health plan meets the required conditions. The plan must include:**

§ 205.239 Livestock living conditions. (Mammal section)

Mammalian Stocking Rate Charts

In the changing of the recommendation since 2009 there has been a significant difference in definition of space requirements and what it applies to.

We recommend that the following is placed at the beginning of the Mammalian Stocking Rate Charts, as suggested in the 2009 recommendations:

During the non-grazing season or during times of temporary confinement, the following space shall be provided for dairy livestock:

- (i) **In confined housing (free stalls, tie stalls etc.) at least one stall must be provided for each animal in the facility at any given time. The size of the stall must be enough to meet the requirement of the herd health plan recognizing the different requirements of the different breeds, stage of lactation and age of the livestock.**
- (ii) **Operations can make a choice to have some or all of their livestock out-wintered or not housed or not in an “outside run or pen” during the non-grazing season so long as livestock has adequate shade, shelter, clean water for drinking, and direct sunlight, suitable to the species, its stage of life, the climate, and the environment.**
- (iii) **In loose housing (bedding packs, dry lots, cover-alls, etc.) the following table applies with space calculated by the taking the total square footage of the floor area of the facility divided by the total weight of the number of animals using the facility on a regular basis, using the actual weight of each animal or the average weight of the breed calculated by using breed or cross bred industry standards:**

We believe that this change will bring clarity in calculations; it will have transparent and accountable standards either through the simple space calculation or the herd health plan, recognize the many different existing housing used by producers, and recognize the different environmental, geographic and production needs of producers who wish to become certified under USDA NOP regulations. This also brings the recommendation into line with existing regulation § 205.239 (4) (iv) **“At least one stall per animal in the facility at any given time.”**

§ 205.239 (a) (1)

We recommend the following changes to o § 205.239 (a) (1):

1. For further clarity and uniformity of definition we recommend that “(1) Year-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight, suitable to the species, its stage of life, the climate, and the environment” be changed to **“(1) Year-round outdoor access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight, suitable to the species, its stage of life, the climate, and the environment”**
2. In line with our recommendation above on definition of space we recommend the **deletion** of the sentence “Space is calculated by floor space on the inside of the animal’s living space.” The previous sentence states that ‘.... The indoor space provided shall meet the minimum requirements of the chart at the end of this document’ and our recommendation clearly defines what space is required.
3. We recommend that the sentence ‘Yards, feeding pads, and feedlots may be used to provide ruminants with access to the outdoors during the non-grazing season and supplemental feeding during the grazing season, but shall be large enough to allow all ruminant livestock occupying these spaces to feed simultaneously without crowding and without competition for food’ be changed to **“Yards, feeding pads, and feedlots may be used to provide ruminants with access to the outdoors during the non-grazing season and to provide supplemental feeding during the grazing season, and shall be large enough to allow all ruminant livestock occupying these spaces to feed simultaneously without crowding and without competition for food.”** Livestock will be using these spaces for a variety of uses from shade, access to water or a loafing area and in some cases there may not be any intention

to feed the livestock or the feed may be there as a supplement to prevent illness, for example hay being available to prevent bloat or minerals available to provide a balanced feed. Depending on the uses of the feedlot, yard or feeding pads there may be no need for all the livestock using the area to be fed simultaneously. We suggest leaving the words “without crowding and without competition” to ensure that no animals are left with nothing to eat and to eliminate competition over feed, and to ensure that there is an adequate amount of feed and time for all those animals that want to eat it to eat it.

4. The sentence ‘If yards, feeding pads, and feedlots are used, the outdoor space provided shall meet the minimum outdoor space requirements of the chart at the end of this section’ is confusing. What is the intent here? If there is cover it does not meet the outdoor access requirement. It would be good to get some clarity on the intent behind this sentence and the practicality of meeting the requirements of the table.
5. It is not clear what is meant by the sentence “All areas contributing to outdoor access must allow contact with the soil during the grazing season.” It unnecessarily repeats part of the definition of Outdoor Access and its difficult to know how an area can be allowed contact with the soil. A person or animal would be in contact with the soil not an “area.”

§ 205.239 (a) (3)

The wording “Appropriate clean, dry bedding, sufficient to keep animals reasonably clean, comfortable and free from lesions” brings in a very subjective judgment as to what is ‘reasonably clean, comfortable and free from lesions.’ The perception of reasonably clean for an inspector or any other visitor to a farm varies from their own experience. While we all may know what is ‘completely dirty’, anything less than that would be difficult to reach a consensus depending on time of year for example: freshly out to pasture, a cow with an unclipped tail may have covered her back end with manure. If the cow has lesions, then preventative and curative measures are covered under § 205.238 (a).

As the welfare of the animal is prescribed elsewhere in the regulation and the organic system plan, we recommend that § 205.239 (a) (3) reverts back to its original language approved by regulation on 2/12/2010 to read:

Recommendation

§ 205.239 (a) (3) Appropriate clean, dry bedding. When roughages are used as bedding, they shall have been organically produced in accordance with this part by an operation certified under this part, except as provided in § 205.236(a)(2)(i), and, if applicable, organically handled by certified organic operations.

Proposed Recommendation Animal Handling, Transport and Slaughter

All producers are concerned about humane treatment of animals from birth to death or slaughter. The slaughter industry has with some justification come under great pressure to improve their humane treatment of livestock. Thanks to the work of Temple Grandin and the continued advocacy of producer groups, non-profit and consumer organizations and consumers in general the practices and conditions at slaughter plants have improved considerably. This has come at some cost to the areas of the country that have few slaughterhouse as the increased standards, HACP plans and liability insurance responsibilities have caused many smaller and micro plants to close rather than finance investments to upgrade their facilities to meet the demands of the new regulations. In the northeast, for example, organically certified slaughter plants may be as much as 250 miles apart. This situation has been recognized by the USDA as an area where they need to invest more resources but micro and small scale slaughter plants of up to 30,000 sq foot present many unique challenges. These include the cost of the facility and the access to capital; lack of trained, or training for, personnel; HACP plans and monitoring for every step of the operation; disposal of waste and the challenge of small businesses operating in a low margin high capital investment businesses. In introducing any new

regulations or oversight for organic certification, we need to be aware of what is already covered by other federal agencies, the paperwork burden on small businesses and the need for all levels of the organic supply chain to be profitable to continue to allow family farms of all sizes to thrive. Consequently we should only proscribe regulation for areas not covered by existing USDA or FDA regulation.

As we have found with the short history of USDA organic certification there will always be those that don't adhere to regulations, some may call them 'bad actors.' The solution is greater accountability and enforcement not more regulation, with changes in regulation used as a last resort in worsening situations. The situation in a Vermont slaughterhouse that the NOSB livestock committee refers to was solved by the regular enforcement action of the USDA Food Safety and Inspection Service (USDA FSIS). Unless the organic inspector was in the slaughter plant were the abuses occurred on a daily basis, it is doubtful whether the proposed increased regulation would have made any difference as the cause was poor inspection by individual FSIS personnel who have since been relieved of that responsibility. Self audits would not have worked in this situation. Slaughter plants that choose to add organic certification to their services offered to producers are already part of a highly regulated system. The Food Safety and Inspection Service (USDA FSIS) is the Agency within USDA responsible for ensuring compliance and enforcement with the Humane Methods of Slaughter Act, Federal Meat Inspection Act and other regulations. The USDA FSIS are required within their regulations to enforce compliance of all the recommendations that the NOSB livestock committee has proposed as part of the day to day work at facilities. Those slaughterhouses that are USDA FSIS inspected and carry the seal that allows product to be sold with distinct labels have an inspector on site at all times the facility is in operation. As the organic label is a distinct label that permits retail sales, organically certified product identified by its label can only be produced at a USDA inspected plant or at plants that are State inspected but meet federal regulations. USDA FSIS inspectors are trained and receive professional development to maintain their proficiency. They are supervised by trained veterinarians (District Veterinary Medical Specialists (DVMS) and regularly evaluated by USDA for their performance. It would seem difficult for organic certification inspectors to replicate those skills, experience and provide such in depth monitoring on humane handling, and also be able to cover the many specific requirements, record keeping and use of materials that organic certification of slaughter plants requires.

Third party certification for animal welfare and slaughter practices has become a marketing tactic in a highly competitive and profitable retail market. Whole Foods, for example, insists on USDA FSIS inspection, organic certification inspection and a third party annual audit that cost from \$4,000 upwards annually. Essentially the third party audit covers more food and plant safety requirements while duplicating many areas already covered by the USDA FSIS. If the NOSB livestock committee want organic to be the gold standard in a highly competitive certification market, it should be because of the high standards at all levels of production from field to table; the high quality of inspectors and certifiers; the multitude of environmental benefits that organic production provides and the quality of the NOP enforcement of the regulations. They should use existing resources and regulations wherever they agree with NOP requirements rather than create an extra level of regulation that will only increase the costs for producers, discourage small family owned slaughter plants from offering organic certification services and increase the challenges that farm families have to fully utilize the financial advantages offered by organic certification.

Before providing direct comment on the recommendations we would like to comment on the background:

Fitness for transport:

This is a big area of concern for all livestock producers and the problem is correctly stated for the livestock industry in general. The challenge for livestock producers is to harvest an animal in order to

get some return on their investment which causes some producers to transport livestock for slaughter that are in poor condition. For livestock that will be processed for organic certification this will not be the case because of the extra work and cost for organic certification makes it prohibitive. Any organically certified cow that has challenges in being fit for transport has probably already been treated with prohibited drugs and lost its ability to be sold as organic. The transportation of non-organic livestock is covered in detail by other USDA agencies with greater resources and experience in this area than the NOP. We do not see this as a problem for organic livestock and is an area already monitored by other USDA agencies.

Young Calves:

This would seem better included in the organic system plan as it's more of an on farm decision about what to feed calves and when to transport than something a transporter or slaughter facility could monitor.

Transport conditions:

These conditions are required for all livestock and enforced by other agencies except for the provision of organic bedding.

Certification of transporters:

The assumption of the committee that the NOSB will recommend that any animal transported for slaughter must be done by an organically certified transporter will be a great hardship to small and mid size operations that have few choices for livestock transportation if they do not own a livestock trailer. It is an increasing challenge to find companies willing to transport livestock, especially in areas of low livestock density and long distances to travel to slaughterhouses. To insist that the transporter of your animal, whether it is a neighbor or a commercial trucker, be organically certified will not be an incentive for the trucker to transport your organic animal at a reasonable cost. The milk hauler and the grain trucker do not have to be certified. The committee and the NOSB needs to consider a situation where an organic animal can be contained in a separate part of a livestock trailer from the time they are loaded to when they reach the slaughter facility where they can be unloaded into a separate pen. The gates to the individual pen within the trailer could be padlocked to insure integrity. Apart for eating bedding, the livestock will not be able to engage in any activity or be further processed during transportation. **We strongly recommend that the NOSB livestock committee re-consider this assumption even though it is not included in the recommendations of the committee.**

Animal Handling

Having a requirement that slaughter plant staff be available after hours is unrealistic and unnecessary, except for an emergency. It will also penalize the micro to small scale plants that have limited staff and shorter hours of operation. It is very easy to schedule transport to meet the schedule of the slaughterhouse.

Slaughter

These requirements are already covered under USDA FSIS regulation.

Slaughter plant audits

To say that animal welfare audits are being done in most slaughter plants is a broad over generalization and again, is biased toward large plants that have a volume of business so they can justify the cost. Animal welfare audits vary from company to company as does their costs. To insist on yet another level of third party audit to verify conditions which are monitored daily by USDA FSIS staff will discourage small to mid size plants from providing organic certification services and for those that chose to, they will need to increase their charges to producers. While the extra work

and costs can easily be absorbed by large facilities where there is dedicated quality assurance staff, the effect on small to mid size plants will be disproportionately higher.

Large slaughter plants will already have regular professional development meetings and will be monitoring every aspect of their HACCP plans and animal welfare protocols on a daily basis. For those micro to mid size plants insisting on a formal self audit will only increase the paperwork burden, and increase the cost to no real effect as they are constantly monitoring their performance working with the USDA FSIS inspector and veterinarian. I have not seen a requirement for formal self audits for any other aspect of organic certification.

In our recommended changes below we have divided the recommendations to meet the title of the section and to ensure accountability with the certified individual or entity. The responsibility for meeting the organic standard should rest with the producer for transportation and the slaughterhouse facility once the livestock is unloaded.

Recommendations for changes to the committee recommendations:

§ 205.241 Humane handling, transport and slaughter: general conditions of animal welfare in handling and slaughter.

Additions in red and Deletions in bold

(a) Handling and Transport: Organic livestock will be transported in pens within the livestock trailer clearly labeled for organic use and be contained in those pens for the duration of the trip. It is the responsibility of the organic producer to ensure that the following conditions are met during transportation:

- (1) Calves must have a dry navel cord and be able to stand and walk without human assistance if they are being transported to a slaughter or auction facility.
- (2) **The livestock trailer/shipping container** ~~Transporters and slaughter plants~~ must provide have season-appropriate ventilation to protect against cold and heat stresses. *(deleted text as this section relate to transportation)*.
- (3) Bedding as appropriate must be provided to livestock during transportation and ~~prior to slaughter. Consumable bedding in shipping containers and at plants must be certified organic.~~ **when roughages are used as bedding, they shall have been organically produced and, if applicable, organically handled by certified organic operations.**
- (4) Arrangements for water and organic feed must be made if transport time exceeds twelve hours.
- (5) **Organic producer will coordinate with** slaughter plant management ~~shall coordinate with~~ and transporters to ensure that waiting time **once the livestock trailer/shipping container arrives at the slaughter facility** is no more than one hour.
- (6) **Organic producer must have an** emergency plans that adequately address animal welfare which must be in place to cover any encountered problems during transport.
- (7) ~~Slaughter plants and~~ **Livestock trailers/shipping containers** must have non-slip flooring.
- (8) ~~Gates in the unloading area must swing freely, latch securely, and be free of sharp~~

~~or otherwise injurious parts. Gates are never to be slammed on animals.~~ (not appropriate for this section)

(9) Adequate lighting must be in place in the **livestock trailer/shipping container** to allow animals to be easily observed.

~~(10) Livestock slips and falls must be scored in all parts of the facility including holding areas, chutes, stun box and the stunning area. No more than 1% of livestock that walk off the trailer may fall during the unloading process. No more than 1% of cattle, sheep, or hogs may slip during unloading.~~

(10) Willful acts of abuse, as defined in § 205.2, are prohibited.

~~(12) Humane treatment procedures for handling immobile and fatigued animals must be in place. Handlers may use sleds and place livestock in the bucket, may not push them up against a wall, gate, or any other object. More appropriate in slaughter plant section as a transporter would not have access to sleds and bucket loaders.~~

~~(13) Electric prods are available for medical use only, i.e., in an effort to save down animals. Prod use must stop after three shocks interspersed with rest periods or if the animal does not attempt to rise. Prods may never be applied to sensitive parts of the animal: eyes, nose, ears, rectum, or reproductive organs.~~

~~(14) Euthanasia must only be performed by trained personnel.~~

~~(15) Euthanasia equipment must be properly stored and maintenance records must be available. Not appropriate for this section as the transporter would not have this skill or equipment.~~

(b) Slaughter Plants

(1) Only USDA FSIS inspected or State inspected plants that meet federal regulations can be used to slaughter organic livestock.

a. As part of their organic certification, slaughter plants must supply access to all FSIS monitoring reports, copies of Regular Scheduled Weekly Meeting Reports between plant staff and FSIS representative, HACP plans, plant self audit where appropriate.

b. Plant must have a Food Safety and Animal Welfare plan approved by FSIS.

c. Plant must be in compliance with Humane Methods of Slaughter Act, Federal Meat Inspection Act and other regulations under “ 9 C.F.R. Chapter 111 – Food Safety and Inspection Service, Department of Agriculture subchapter A PART 313—HUMANE SLAUGHTER OF LIVESTOCK”

(2) As part of their organic certification special attention will be paid either by visual inspection or by reviewing reports to ensure that the following criteria for animal

welfare are met with allowance for micro plants (for example if only 5 cattle a week are killed, the percentage might be an unrealistic number):

- a. No more than 3% of cattle vocalize as they move through the restrainer, stunning box and stunning area. No more than 5% of hogs squeal in the restrainer due to human provocation. No more than 5% of livestock vocalize when a head holder is used during stunning or slaughter.
- b. Conscious, sensible mammals must never be restrained by suspending them by their limbs.
- (c) No more than 1% of animals slip at the stun box or in the stunning area. No more than 1% of animals fall entering the stun box or in the stun box area.
- (d) One hundred percent of animals are insensible on the bleed rail.
- (e) 95% of cattle and sheep are effectively stunned via captive bolt or gunshot. 99% of electrodes are placed correctly when livestock are stunned with electricity.
- (f) No more than 1% of hogs vocalize due to hot wanding. Electrodes must not be energized before they are in firm contact with the animal.
- (g) When carbon dioxide (CO₂) or other controlled atmosphere stunning systems, including gondolas or other conveyances for holding a group of animals, are used, animals must be able to lie down or stand without being on top of one another. When head to tail conveyor systems are used, this score may be omitted.

§205.236 Origin of Livestock

We understand that the NOP is in the process of writing an ANPR on **§205.236 Origin of Livestock** and we offer these comments at this time:

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.

Using these principles, the answers to questions that have been raised are very evident:

Question: If every animal must be organic from last third, what if a farm goes out of production. Can their transitioned animals be sold as organic?

Answer: No, they cannot be sold as organic. They started their life as non-organic animals and must go back to that status when they leave the farm on which they were transitioned.

Question: Can a person who has already converted one herd convert another herd or be a partner or member of an operation that converts another herd?

Answer: No, conversion is “*a one-time opportunity for producers*”. However, a child of an organic dairy producer who converted a herd should not be construed as having exercised the one time option to convert unless they are an adult or a bona fide partner in the operation at the time of conversion.

Question: What about breeder stock? Once breeder stock is on a farm, must it be converted?

Answer: No, breeder stock cannot be converted unless it was on the operation at the time of the start of a producer’s one time herd conversion. 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 and FOOD Farmers 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 proposed regulation 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 youngstock into the non-organic 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) New dairy operations transitioning to organic production
 - b) Existing 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.

We do not request any exemptions to this rule. Some have advocated for transitioned cows and heifers to be sold as organic. 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. There are some example record keeping available from various certifiers that show the criteria necessary:

- Animals leaving/entering herd
- ID of animals
- Animal treatments (to keep track of organic status or loss of organic status)
- Transitioned cows not for organic sale

Animal identification lists for all livestock operations are a must and certifiers must be held accountable if they are not requiring such, as we understand has been the case.

If the allowance for breeder stock is retained to enable non-organic breeder stock to be brought onto an organic operation 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, it does raise production difficulties. The breeder stock could not be converted to organic production on a certified organic operation and their milk would not be organic. The newborn could not receive the colostrum from its mother and colostrum is essential to the future growth and health of the calf, especially within an organic system. In order for the calf to retain its organic status, newborns could not be kept with their mothers and provisions would have to be made for alternate milking of the breeder stock animals and disposal of the breeder stock milk through non-organic animals or avenues. The calf would need to be fed with stored colostrum and milk from organic cows.

Our Suggested language for § 205.236 (a) (2) (iii): ***Dairy animals – replacement stock*. Once a dairy operation (or that of any responsibly connected party) has been converted to organic production, all dairy animals (including young stock) shall be from sources under organic management from the last third of gestation.**

Already defined in the regulations:

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.