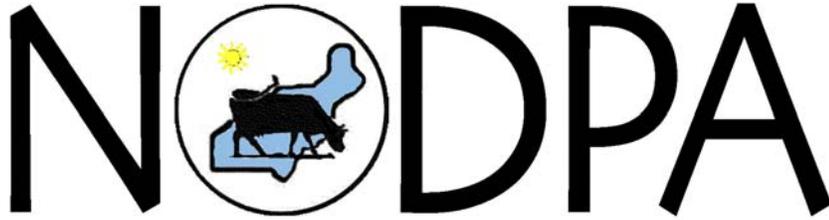


Northeast Organic Dairy Producers Alliance



October 25, 2010

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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 Wisconsin on October 25th

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 Lisa McCrory, NODPA newsletter and web editor, to the NOSB October 2010 meeting at the Best Western Inn Towner, 2424 University Avenue, Madison, Wisconsin

We want to take this time to **thank Kevin Englebert** for his excellent work and dedicated service as a member of the NOSB. We also want to recognize that it takes a family to support a farmer as a NOSB member and Kevin's wife and children have worked alongside him to make it possible for him to donate his time and knowledge to his NOSB work on behalf of organic agriculture. We hope he continues to share his knowledge with the Board in the future and we wish him and his family every success in the future.

The **financial sacrifice of Kevin and his family** while serving on the NOSB highlight the need to **provide a stipend** to NOSB members who are either full-time farmers or self employed industry professionals. The lack of a stipend has prevented many good farmers who earn their living from farming from volunteering their time to serve on the Board. For a dairy farmer this would include the cost for a relief milker, extra help to complete field work, and an acknowledgement that when a farmer leaves their farm in the control of someone else, there are inevitable losses of income if only through a loss of milk production because of a different milker. We urge the USDA NOP to address this issue to ensure that we can have a balanced membership on the Board that truly reflects the unique mix of organic agriculture.

NODPA welcomes the recent work of the NOP to provide guidance and more clarity in how inspectors and certifiers interpret different regulations. 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.**

NODPA supports the Livestock Committee recommendation regarding clarification of 205.238(c)(1):

§ 205.238 Livestock health care practice standard.

(c) The producer of an organic livestock operation must not:

(2) Administer any animal drug, other than vaccinations, *preventives, and pain relief medications*, in the absence of illness;

§ **205.239** Livestock living conditions. (Mammalian section)

Invitation for Public Input on Stocking Rate Charts

We strongly believe that organic animal welfare guidance and standards must be sensible and based on reasonable standards that are determined by the realities of farming, good husbandry, grazing, natural animal behavior, and natural healing.

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. 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. 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. Detailing minimum average standards will cause some operations to work to those standards which may be inappropriate to their location and facility. We do not support any space requirements within the regulations for dairy animals, rather an education of inspectors to ensure proper standards are achieved based on guidance from the NOP.

Our members have a variety of different breeds and cross breeds in their milking herd and use a variety of housing from tie-stall barns to free stall to bedded pack to outside year round with adequate shelter. The decisions about facilities are unique to each farm family, and they are dependent on location, access to capital and size of herd.

The Livestock committee’s recommendation contains a table with a minimum square footage for each animal dependant on their size. There is no guidance as to how that area is to be measured. We have the following questions which have been raised by our members:

- What is included in this space? In a free stall barn does it include the feeding alleyways or just the stall area? In a tie-stall barn, does it include the “lunging area” that a cow uses to stand which can also be the feeding area?
- If you have a mixed herd with variable sizes, do you need variable sizes of stalls or is the total designated area for “bedded space” divided by the weight of the total number of animals using the space to find the average “bedded space” needed?
- Does the inspector need to come in with a tape measure or will they be required to have the building dimensions and take an average for the whole herd?

We recommend that the inspectors 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. As dairy farmers we recommend that the inspector looks more at the cow than has a tape measure for the size of the stall.

We must also raise the issue of how “**access to the outside**” is being defined by certifiers and request that the NOP issue some guidance on this within a short time frame. We raise the following questions and concerns as a result of discussions with farmers:

- Are wind breaks required to make outdoor access more comfortable?
- Farmers need guidance on meeting the regulations while protecting themselves from under-educated animal welfare activists who might see animals outside in adverse conditions and draw the wrong conclusions.
- Roofed barnyards – are they considered outdoor access?
- Do greenhouse barns with no sides meet the criteria for outside access?

- Will the NOP be using the standards developed by animal welfare groups that have different regulations for indoor and outdoor access categories?
- How does outdoor access vary in different geographic locations and with different breeds? In some areas, shade may be required during outdoor access and provided by a simple pole barn roof whereas a northeastern farmer, who has different weather conditions, might require a more elaborate facility to ensure animal welfare. How do farmers plan for future facility improvement?
- What is an acceptable balance between animal welfare and outside access regulations?

The National Organic Standards Board Certification, Accreditation and Compliance Committee (CACC) on the use of a USDA Seal in the “Made With” Labeling Category:

The USDA Certified Organic Label represents the “gold standard” of labels in the marketplace. The use of this label in any form on products that are not 100% organic holds a clear risk of causing confusion in the marketplace about the attributes of Certified Organic products. A proliferation in the number of “attribute labels” in the marketplace is creating consumer confusion (“label fatigue”). The National Organic Program Rule clearly intended to establish a difference between products labeled as “Organic” and those labeled as “Made with Organic.” This distinction must be clear and unequivocal. We strongly disagree with the CACC recommendation the need for a “concise and consistently worded statement that communicates the USDA certified status of “Made with organic” products.” The time and work of the NOP needs to be devoted to protecting the integrity of the certified organic products. The future economic sustainability of organic farmers who have invested large amounts of capital and sweat equity in establishing the integrity of their products, relies on a clear and distinct consumer image of certified organic. This recommendation will undermine the future of the organic market and consumer confidence in products labeled organic.

§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.