



# Accredited Certifiers Association, Inc.

*Accredited certifying agents working together to ensure the integrity of organic certification in the United States*

July 24, 2015

Scott Updike  
Agricultural Marketing Specialist  
National Organic Program  
USDA-AMS-NOP  
Room 2646 So. Ag Stop 0268  
1400 Independence Avenue, SW  
Washington, DC 20250-0268

Re: Docket AMS-NOP-11-0009; NOP-11-04PR

Dear Mr. Updike:

Thank you for the opportunity to provide comments to the National Organic Program regarding the Proposed Rule for the Origin of Livestock. ACA members are very supportive of the National Organic Program efforts to create greater consistency in the implementation of a standard for the transition of dairy animals into organic production

The Accredited Certifiers Association (ACA) represents 49 USDA Accredited Certifying Agents, both foreign and domestic. An ACA Working Group was initiated to develop our comments on the Origin of Livestock Proposed Rule; additionally general comments were solicited from all our members.

The ACA has prepared general comments, plus has included specific wording revisions with the regulatory language in *Appendix A. Revisions to the Regulatory Text*.

## **A. General Comments**

ACA members believe that the proposed one-time transition per operation of conventional dairy animals to organic production will provide the clarity and consistency necessary to the organic dairy sector and will ensure to consumers that producers are following the intent of the Organic Foods Production Act.

ACAs understand the need for this Proposed Rule, but also recognize that the Proposed Rule will exclude some types of transition that typically occur in the organic dairy sector, which we believe will be to the detriment of growth in the organic dairy sector. In order that the NOP is aware of the multiple impacts of the Proposed Rule we are providing examples, which many ACAs have encountered in the transition process, that we believe will be excluded by the Proposed Rule.

- A farm family has an organic dairy operation that has undergone a herd transition. The parents want to start a new farm for one of the children, by transitioning a herd. If the transition is tied to the producer, the parent would not be able to start a new farm and then transfer to the children. This is a very common practice among Amish, or Plain communities for encouraging children to farm.

- An existing dairy operation that has transitioned a milking herd wishes to move to another location/or state and begin another dairy operation, however, for reasons such as infrastructure renovations needed, or lack of a land base that qualifies for certification, the animals cannot be moved to the new operation as certified animals could not be placed on noncertified land. Under the Proposed Rule this producer would not be eligible for transition of a new dairy herd on a new farm.
- A farm operation with the intent to milk organic dairy animals begins and completes the transition of land and animals. An unforeseen circumstance (death in family, fire) prohibits them from actually beginning milking of the animals. It appears the family would be prohibited from selling these transitioned animals.

### **Producer as the one-time transition link**

The Proposed Rule links the one-time transition to the “producer”. While the existing Rule contains a definition of “producer” this term is not generally used by either the National Organic Program or accredited certifying agents as the unit of Regulation. The terms used for regulatory purposes are “certified entity” or “certified operation”.

Our members are concerned with the enforceability of the Proposed Rule if the one-time transition is linked to a *producer*, rather than the certified entity or certified operation (defined in §205.2 of the current Rule). Historically all adverse actions have been linked to a specific organic certificate, not a specific producer.

ACAs are asking that the one-time transition be linked to the *certified operation*. The use of certified operation will create consistency in the enforcement of this requirement.

### **Fiber Animals**

We encourage the NOP to consider the addition of fiber animals to the eligibility for transition. We believe a 12 month transition for fiber animals is in line with other international programs, and placing US operations under the “last third of gestation” requirement for fiber puts these operations at an economic disadvantage. Fiber is not consumed, and is harvested annually (generally); a transition would permit organic management for 12 months. Under the Proposed Rule an operation could transition and milk their sheep and market the end products (milk and/or cheese) as organic, but could not harvest the wool as organic wool - ever. That is neither sound nor sensible.

### **Introduction of New Herd Genetics**

We acknowledge that producers will have additional challenges if they plan to change their herd genetics, particularly if they have utilized the one-time transition allowance. The lack of available organic animals will limit the selection, particularly in small ruminants. The breeder stock allowance does provide for some lee-way, however, there are concerns regarding non-organic breeder stock on dairy operations (see our comments in Part F). This is a complex issue that needs further discussion and clarification.

## B. Definition Revisions

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

The ACA believes that this definition is problematic and too restrictive for the following reasons:

- Though we understand the intent as discussed in the Preamble, few people read the Preamble as an enforceable regulation and the use of the words “milking parlor” in the rule text is too confining. Not all operations have a *milking parlor*. Various facilities are utilized for milking: pipeline systems, mobile systems in pasture areas, and some share milking facilities; not all dairy operations have a milking parlor.
- The Proposed Rule appears to prohibit new producers from starting an organic dairy operation by building up a herd of young stock and transitioning these animals prior to freshening and milk production, as they would not have *at least one lactating animal*. Starting an organic dairy with only young stock is a common practice among young farmers. We would not want to eliminate the possibility of new farmers entering organic production in this manner.

ACA is proposing a revision to the *dairy farm* definition as follows:

*Dairy operation. An operation that is certified for or is applying for certification of organic livestock and production of organic milk or milk products.*

The dairy operation definition links to the certified entity and identifies the specific type of operation – dairy and organic milk production. This definition would also remove the reference to milking parlor, which is not contained in the Proposed Rule language, other than in §205.2.

2. **Third-year transitional crop** – crops and forage from land, included in the organic system plan of a producer’s operation, that has had no application of prohibited substances within 2 years prior to harvest of the crop or forage.

We believe the definition lacks clarity regarding whether third-year transitional crops may be purchased from other producers currently transitioning land. We do not believe that is the intent and also note that the audit trail review for such an allowance would be very difficult.

The allowance for use of third-year transitional crops should be limited to the producer who is also transitioning dairy animals. We suggest that the definition be more restrictive by revising the following:

*Third-year transitional crop* – crops and forage from land, included in the organic system plan of a ~~a~~ **the** producer’s operation, that has had no application of prohibited substances within 2 years prior to harvest of the crop or forage.

## C. Increasing the number of animals undergoing transition

The Preamble, pg. 23462, 1<sup>st</sup> column, bottom, states:

If a producer decides to increase the number of animals undergoing transition during a one-time transition period, then the producer could 1) source organic dairy animals, 2) source nonorganic animals and extend the transition period for all animals undergoing transition such that the end their transition together after 12 months of organic management.

1. We believe that the Final Rule should clarify that if organic animals (raised from last 3<sup>rd</sup> of gestation and qualified as organic slaughter stock) are added during the transition, *and are fed third-year transitional crops*, they lose their organic slaughter status. The Proposed Rule does not address this issue.

We suggest the following revision to §205.236(a)(2)(iii)

(iii) During the 12-month period, transitioning dairy animals and their offspring may consume third-year transitional crops that are included in the organic system plan of the dairy operation.

And the following addition to §205.236(b)

(3) Organic dairy animals (qualified as organic slaughter stock), added to the operation during the transition of non-organic animals, and fed third-year transitional crops, may not be sold, labeled, or represented as organic slaughter stock.

2. There are many instances where an operation begins its transition only to find that some animals are not handling the transition well and must be removed. To compensate for the removal, operators will purchase young stock (weanlings) during the transition. These animals would not reach milking age by the end of the transition period for the rest of the herd. The animals would continue to be managed organically, and would in effect, exceed the 12 month transition requirement by the time they are of milking age.

The Proposed Rule requirement that all animals end their transition requirement on the same date would prohibit this practice. We believe that the transition period is a good time to add young stock, as they will not be old enough to milk at the end of the transition period, but will be under organic management. There is no effect on organic integrity. We suggest the following revision:

§205.236(a)(2)(vi) All dairy animals must end the transition at the same time, Except, that young stock more than 12 months from lactation may be added during transition.

#### **D. Implementation**

1. The ACA is asking that a stated implementation period be included in the Final Rule. Time will be needed by certification agencies to understand the final rule, develop forms and procedures and educate potential clients and/or existing clients. For those certification agencies that have procedures that differ from the Final Rule a time for conversion is also needed.

We ask that an implementation period of one full calendar year (which would permit a full certification cycle to occur prior to implementation) be included in the Final Rule.

2. While the Preamble, pg. 23463, column 3, discusses the impact of implementation on *certified* operations, there is no discussion regarding operations that have been in discussion with an ACA, have an agreed upon transition plan, but are not yet certified. Our members agree that these operations should be permitted to complete the transition process as agreed upon, rather than have their transition process changed by the implementation of the Final Rule. We agree that once certified, the operation would not have an additional opportunity for a herd transition. We ask that the status of operations not yet certified, already in the transition

process, be addressed in the Final Rule. We believe that granting a long implementation period addresses this concern.

3. The ACA is asking for clarification regarding certifying agents responsibilities included in the *Implementation Considerations* section, pg. 23463 of the Preamble, 4<sup>th</sup> bullet:

Maintain records of applications for certification or certified, including records pertaining to the origin of livestock, for at least 10 years from the date of their creation pursuant to §205.510(b)(2)

Does the statement *pertaining to the origin of livestock* refer to the certifier maintaining herd lists, identifying whether dairy animals are organically managed from the last third of gestation, or transitioned into organic production? While some certifiers obtain an animal listing at the time of application for certification, these records are very soon out of date, as they change on a daily basis. Certifiers currently require the operator to maintain a current listing of animals that are reviewed at the time of inspection. Please specifically identify the records to be maintained by certifying agents.

#### **E. Allowances for Re-Transitioning**

The Preamble, pg. 23463, column 3, discusses the allowance for re-transition in the event a Federal or state emergency pest or disease treatment program requires use of a prohibited substance under §205.672 Emergency Pest or Disease Treatment. The ACA supports this re-transition allowance.

The ACA also supports the use of a Temporary Variance, under §205.290, which allows for transition of additional animals in the event of natural disasters (such as fire or flood) and other extreme situations, such as condemnation of a herd due to disease. We ask that the Final Rule include these examples of a Temporary Variance allowance.

#### **F. Breeder Stock**

We believe that the organic community supports the requirement that once breeder stock is brought on to an organic operation that this stock should be managed organically with no allowance for a return to conventional management practices.

From the perspective of many ACAs, the breeder stock allowance is directed more towards meat producing animals, rather than dairy animals. The current allowance for movement of non organic breeder stock in and out of organic management:

- is easier to monitor on a beef operation, as beef cows typically nurse their offspring;
- does not recognize the difficulty of monitoring the milk production of a non organic breeder stock used for dairy production. Typically, the offspring do not nurse the cow in organic dairy production. The operator would be required to develop a plan to avoid co-mingling of the milk from non organic breeder stock, with the rest of the organic milk. The nonorganic milk from the breeder stock could not be fed to other organic calves. The recordkeeping required of the producer and monitoring of the records by the certifying agent would be very complex.

We believe the lack of a more substantial revision to §205.236(a)(3) will be problematic for certifying agencies, and for the integrity of the organic label. In addition, we ask the NOP to consider the nature of the operation when finalizing breeder stock language.

Additionally, if the current language of the Proposed Rule is retained, the addition of the following language from the Preamble, pg. 23464, 2<sup>nd</sup> column to §205.236(a)(3)(ii) would provide much needed clarification regarding the status of calves who nurse a nonorganic breeder stock mother:

(ii) Such breeder stock must be managed organically throughout the last third of gestation and the lactation period during which time they may nurse their own offspring, though inadvertent suckling by non-offspring would not cause loss of organic status to the calves.

#### **G. Procedures used by Certifying Agencies to determine one-time transition eligibility**

ACAs have procedures in place in the event that tracking back through an operations history is necessary. These tools are currently used in the process of reinstatement, suspensions, unresolved noncompliances, and when new applicants that have been previously certified apply for certification with a new agency.

The procedures include questions on the application and organic system plan, review of the implementation of the organic system plan at inspection. In addition the previous certifier could be contacted, however, the link would be the certified operation. If only the producer is known, and not associated with a certificate, identifying past history could be difficult.

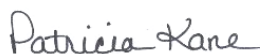
#### **Summary**

The publishing of a Final Rule on the Origin of Livestock will provide a clear requirement regarding the transition process for organic dairy production. We ask that the NOP consider our recommendations for revision of the Proposed Rule in order to have effective enforcement of the Rule, and encourage new operators to transition to organic production. The following changes will provide the ability to consistently enforce the Rule:

- The one-time transition should be linked to the *certified operation* in order to be able to track the certification history adequately.
- An implementation time line of one full calendar year for certification agencies to revise their procedures and educate certified producers and new applicants.
- Clarification that the third-year transitional feed allowance applies to only crops produced on the dairy operation and included in their Organic System Plan.
- Revision of the breeder stock allowance to require that once an animal is brought to an organic operation the animal must be managed organically.

We thank the National Organic Program for the work on the Proposed Rule for Origin of Livestock and the opportunity to provide our perspective.

Sincerely,



Patricia Kane  
Coordinator

**Appendix A: Revisions to the Regulatory Text**

<p align="center"><b>Text of Proposed Rule and Suggested Revisions</b>                      Blue strikethrough is deleted text.                      Red underline is new text.</p>	<p align="center"><b>Additional Comments</b></p>
<p>§205.2 <del>Dairy farm. A premises with a milking parlor where at least one lactating animal is milked.</del>  <u>Dairy operation. An operation that is certified for or is applying for certification of organic livestock and production of organic milk or milk products.</u></p>	<p>See comments in Part B.1.</p>
<p>§205.2 <i>Third-year transitional crop.</i> Crops and forage from land, included in the organic system plan of <del>a</del> <u>the</u> producer’s operation, that has had no application of prohibited substances within 2 years prior to harvest of the crop or forage.</p>	<p>See comments in Part B.2.</p>
<p>§205.2 <i>Transitional crop.</i> Any agricultural crop or forage from land, included in the organic system plan of a producer’s operation, that has had no application of prohibited substances within one year prior to harvest of the crop or forage.</p>	
<p>§205.2 <i>Transitioned animal.</i> 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 or for the purpose of organic fiber.</p>	
<p>§205.236 (a) Livestock products that are to be sold, labeled, or represented as organic must be from livestock under continuous organic management from the last third of gestation or hatching: Except, That:                      (1) Poultry. Poultry or edible poultry products must be from poultry that has been under continuous organic management beginning no later than the second day of life;</p>	
<p>§205.236(a)(2) Dairy animals. A <del>producer</del> <u>dairy operation</u> as defined in §205.2 may transition dairy animals into organic production only once. <del>A producer</del> <u>The operation</u> is eligible for this transition only if the <u>producer-operation</u> starts a new organic dairy <del>farm</del> <u>operation</u> or converts an existing nonorganic dairy <del>farm</del> <u>operation</u> to organic production. A <del>producer</del> <u>certified operation</u> must not transition any new animals into organic production after completion of this one-time transition. 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:</p>	
<p>§205.236(a)(2)(i) During the 12-month period, dairy animals must be under continuous organic management;</p>	
<p>§205.236(a)(2)(ii) During the 12-month period, the <del>producer</del> <u>dairy operation</u> 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;</p>	
<p>§205.236(a)(2)(iii) During the 12-month period, <u>transitioning</u> dairy animals and their offspring may consume third-year transitional crops <u>that are included in the organic system plan of the dairy operation.</u></p>	<p>See Comments in C.1.</p>

<p align="center"><b>Text of Proposed Rule and Suggested Revisions</b></p> <p align="center">Blue strikethrough is deleted text. Red underline is new text.</p>	<p align="center"><b>Additional Comments</b></p>
<p>§205.236(a)(2)(iv) Offspring born during or after the 12-month period are transitioned animals if they consume third-year transitional crops during the transition or if the mother consumes third year transitional crops during the offspring’s last third of gestation;</p>	
<p>§205.236(a)(2)(vi) All dairy animals must end the transition at the same time, <u>Except, that young stock more than 12 months from lactation may be added during transition.</u></p>	<p>See Comments in C. 2</p>
<p>§205.236(a)(2)(vii) Dairy animals that complete the transition are transitioned animals and must not be used for organic livestock products other than organic milk;</p>	
<p>§205.236(a)(2)(viii) After the 12-month period ends, transitioned animals may produce organic milk on any organic dairy <del>farm</del> <u>operation</u> as long as the animal is under continuous organic management at all times on a certified organic operation; and</p>	
<p>§205.236(a)(2)(ix) After the 12-month period ends, any new dairy animal brought onto a <del>producer’s dairy farm(s)</del> <u>dairy operation</u> 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 <del>farm</del> <u>operation</u>.</p>	
<p>§205.236(a)(3) Breeder stock. Livestock used as breeder stock may be brought from a 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</p>	
<p>§205.236(a)(3)(ii) Such breeder stock must be managed organically throughout the last third of gestation and the lactation period during which time they may nurse their own offspring, <u>though inadvertent suckling by non-offspring would not cause loss of organic status to the calves.</u></p>	<p>See comments in Part F.</p>
<p>§205.236(b) The following are prohibited: (1) 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.</p>	
<p>§205.236(b)(2) 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.</p>	
<p><u>§205.236(b)(3) Organic dairy animals (qualified as organic slaughter stock), added to the dairy operation during the transition period, and fed third-year transitional crops, may not be sold, labeled, or represented as organic slaughter stock.</u></p>	<p>See Comments in Part C.1.</p>
<p>§205.236(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.</p>	