



Accredited Certifiers Association
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July 12, 2021

Jennifer Tucker Ph.D., Deputy Administrator
National Organic Program
USDA– AMS–NOP, 1400 Independence Ave.
SW, Room 2642–S, Stop 0268,
Washington, DC 20250–0268

Re: Docket Number: AMS– NOP–11–0009; NOP–21–04PR,
Regulatory Information Number (RIN): 0581–AD89

Origin of Livestock Proposed Rule

Dear Dr. Tucker,

Thank you for the opportunity to provide comments to the National Organic Program regarding the Proposed Rule for the Origin of Livestock. The Accredited Certifiers Association (ACA) is a 501(c)(3) nonprofit educational organization created to benefit the organic certifier community and the organic industry. The ACA strives to ensure consistent implementation of the USDA Organic Regulations through collaboration and education of accredited certification agencies. We are committed to upholding organic integrity and maintaining stakeholder trust to facilitate the growth of the organic industry. Our organization is made up of 63 USDA NOP accredited certifying agencies worldwide, which includes 46 of the 47 accredited certifiers headquartered in the United States. We are the frontline decision-makers for the effective implementation of the National Organic Program. 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. On July 24, 2015, the ACA submitted public comments for this proposed rule. We will reference our previous comments but will focus on the changes presented for this comment period.

We appreciate the opportunity to comment on this proposed rule. Transition was intended, in OFPA, to allow a conventional or new dairy farmer to transition their operation to organic production. Because the regulation language was not specific enough to allow herd transition only in the originally-intended context, some certifiers allowed operations to transition multiple herds of dairy cattle, to continuously transition individual animals over multiple years, and to transition animals solely for the purpose of sale as organic to another farm where they would be



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milked. This allowance led to surplus organic animals and surplus organic milk, driving down the prices of each and undercutting dairy farmers who transitioned a herd only once and raised all animals as organic since that initial transition. This loophole has been devastating to the organic dairy industry.

We would like to first comment on whether the final rule should use the term “operation” to describe the regulated entity instead of “producer.” We continue to support our previous position from our 2015 comments to use the term “dairy operation” instead of “producer.” As a reminder, our proposed definition was “Dairy operation. An operation that is certified for or is applying for certification of organic livestock and production of organic milk or milk products.” Certifying agencies have procedures to trace back through an operation’s history if necessary, which currently rely on the certification connected to that operation. These procedures are used in the process of reinstatement, suspensions, unresolved noncompliances, and when new applicants who were previously certified apply for certification with a new agency. If only the producer is known, and not associated with an organic certificate, verifying the certification history could be difficult. Therefore, changing the term from "producer" to "dairy operation" would help with oversight on who is eligible since we can more easily verify if an "operation" has previously been certified. Tying transition to a person might prevent organic dairy farmers from selling their farm to another farmer, or transferring ownership of their farm to their children, and moving somewhere else to start another farm and transition another herd.

Among ACA members there is not a consensus about whether to permit sale and transfer of transitioned animals. Many certifier members agree that there are reasonable circumstances for sale or transfer of transitioned animals, such as when an entire farm is purchased (inclusive of its current milking herd), when a farm goes out of business or leaves the dairy industry and sells its stock, or when animals are sold or given to a younger family member to start their own dairy farm. Some certifier members are concerned about the potential adverse economic impact of requiring last third of gestation animals to grow a herd and whether there is enough supply to meet demand. However, other certifiers believe that the only effective way to close the loophole for continuous or multiple transitions is to prohibit sale or transfer of transitioned animals; otherwise, a person could certify and surrender a series of distinct business operations, and at each operation transition a herd to be milked elsewhere at other operations.

1. Implementation timeframe. AMS had proposed that all requirements be implemented upon the effective date of a final rule, with an exception for any transition that was already approved by a certifying agent. AMS requests comments about whether an implementation timeframe is necessary for organic dairies to comply. If one is needed, AMS requests comments on how long this implementation period should be and why.



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The ACA supports the immediate implementation of a final origin of livestock rule. Certifiers will need to modify forms, change inspection systems, train personnel, and inform operators; however, the ACA recognizes the urgency in getting the rule implemented and supports doing so as soon as possible. Transitions already approved by a certifying agent must be completed within 12 months of the effective date.

2. Accuracy of the estimates in the Regulatory Impact Analysis (RIA)/ Regulatory Flexibility Analysis. The cost estimates presented in this notice are based on USDA and industry data. AMS requests feedback on the assumptions related to costs and benefits, with supporting information (data and sources) where available.

The proposed rule stated that the *“AMS believes that the long-term economic impact on producers of not implementing the proposal would be greater than the economic impact of a rule due to the need for greater consistency in applying the origin of livestock standard across the organic dairy sector.”* The ACA firmly agrees with this statement and does not have specific comments in regard to the numeric economic figures presented in the proposal.

3. Exceptions to the one-time allowance requirement. AMS has not proposed exceptions to the one-time transition requirement, but the current regulations permit temporary variances in some scenarios (§205.290) and allow for re-transition following Federal or State emergency treatments (§205.672). AMS seeks comments on whether the rule should include any additional exceptions to the one-time transition requirement for scenarios where the current regulations would not apply, and if so, what scenario(s) would warrant an exception.

The ACA does not support more than one transition per operation. Our comments from 2015 had listed three scenarios for exceptions to the one-time allowance requirement but we no longer believe it is necessary to specify these exceptions based on use of “operation” rather than “producer” as the regulated entity and existing opportunities for temporary variances.

The ACA would like to acknowledge the rule’s issues with non-bovine dairy operations such as milking goats or sheep. The NOP recognizes that this rule has not considered non-bovine dairy operations, though it will be applied to those operations. The NOP stated that the impact on these operations would be minimal because they are a relatively small portion of the dairy industry. The lack of consideration of these species in rulemaking is one of the reasons non-



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bovine dairy operations are not a bigger portion of the industry. Leaving them out of the conversation perpetuates the problem. Due to the small number of non-bovine dairy operations, it may be harder for them to source organic from last third of gestation replacements off-farm that are suited to site-specific conditions of the operation and the operation's preferred breed(s).

We would also like to acknowledge the potential impact on heifer-rearing operations. Although we support the rule as written, we would like to recognize that some of these operations would not meet our proposed definition of dairy operation or the NOP's proposed definition for dairy farm and would not be given the option to transition. Some may not be able to be certified because they are not milking operations. This rule would also change the purchasing practices of these operations.

The ACA would like to thank the NOP for the work that went into the Origin of Livestock Proposed Rule. We concur that the benefits of this rule outweigh the impacts. We also agree that the benefits of the proposed rule provide specificity and clarity to the enforcement of regulations relating to the origin of dairy livestock and the management of breeder stock. Certification agencies value uniformity in the application of USDA organic regulations. This is in line with the Accredited Certifiers Association's mission and vision. *We envision a world where the USDA Organic label is always trusted and valued.* We agree that this rule would help support consumer confidence by preventing organic dairies from continuing to transition non-organic animals into organic milk production. This strengthens the value of the organic brand. We do not support the alternatives considered for this rule: allowing continual transitions or prohibiting all transitions. We appreciate being able to offer comments on this important subject.

Sincerely,

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