



CENTER FOR
FOOD SAFETY

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U.S. Department of Agriculture
Room 2646-So., Ag Stop 0268
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Re: Origin of Livestock Rule for Dairy

Center for Food Safety (CFS) is a non-profit membership organization that works to protect human health and the environment by curbing the proliferation of harmful food production technologies and by promoting organic and sustainable agriculture. Our membership has rapidly grown to include over 700,000 people across the country that support organic food and farming, grow organic food, and regularly purchase organic products.

As a public interest organization intent on upholding the integrity of the Organic Foods Production Act (OFPA), CFS agrees with AMS's determination that "the current regulations regarding the transition of dairy animals and the management of breeder stock on organic operations need additional specificity and clarity."¹ In accordance with the standard convention and legal requirements under OFPA—to circulate draft regulations for review and comment by the wider organic community and solicit input from the best organic thinkers and practitioners in shaping and continually improving organic standards—this draft commendably serves that purpose. Based upon our conversations with farmers and our own research, CFS's comments are intended to help fine-tune the details of the draft regulations so they more closely align with the needs of organic dairy farmers, uphold high standards of organic integrity, and meet consumer expectations which ultimately drive market expansion.

One-time herd transition for "responsibly connected person(s)," not "producer"

In the proposed rule, AMS/NOP ties the one-time transition to organic of a conventional dairy herd to the producer: "A producer is defined under the regulations as 'a person who engages in the business of growing or producing food, fiber, feed, and other agricultural-

¹ See 80 Fed. Reg. 23455, 23477 (Apr. 28, 2015) (to be codified at 7 C.F.R. § 205.236 (a)).

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based consumer products' (section 205.2). The regulations also define a person as an 'individual, partnership, corporation, association, cooperative or other entity.'² While we understand that the intent of tying the transition exemption to the producer is to prevent organic dairies from transitioning multiple herds, CFS believes that the intent would be more directly and effectively accomplished by tying the transition to the "responsibly connected person(s)."

In accordance with the "responsibly connected person" approach, CFS recommends that the following standard and language is adopted instead: "Any person who is a partner, officer, director, holder, manager, or owner of 10 percent or more of the voting stock of an applicant or a recipient of certification or accreditation would be allowed a one-time herd transition exemption. Any person with a significant financial or managerial stake in a dairy operation would utilize their one-time eligibility once a transition occurs at that operation." An exemption regulated in this manner would stop the same entity (producer/corporation) from setting up Limited Liability Corporations (LLC) as new start-ups to transition multiple conventional herds to organic, thereby circumventing the rule. Conversely, by attaching the exemption to a producer, as defined in the draft rule, it would allow any newly certified entity (individual or corporation) to be eligible for the one-time transition of a conventional dairy herd each time they reconfigured their business arrangement. This would unfairly allow businesses to establish new start-up dairy operations as new LLCs, qualifying them for an additional transition exemption.

We urge AMS/NOP to tie the one-time transition exemption to the "responsibly connected person(s)" to more directly fulfill the primary goal of the proposed rule— to prevent organic dairies from transitioning multiple conventional herds or animals. This would more effectively preclude producers from circumventing the rule.

Transitioned animals must not be sold as organic

CFS supports the proposed rule where it appropriately acknowledges that dairy products from a transitioned animal, such as milk and cheese, may be sold as certified organic. We also support AMS/NOP in its determination that slaughter products from transitioned animals, such as meat and fiber, cannot be sold as organic because these products have not come from animals that have been under continuous organic management from the last third of gestation.³

The rule currently allows for transitioned animals to be sold to other farms or producers as

² *Id.*, at 23460.

³ *Id.*

organic animals, “[b]ased on some stakeholder comments, AMS considered limiting transitioned animals to produce organic milk only on the dairy farm upon which they were transitioned. However, AMS believes that some movement or inter-farm sales of transitioned animals is reasonable and expected.”⁴ While CFS acknowledges that inter-farm sales of transitioned animals is inevitable, we urge AMS/NOP to clearly state in the regulations that transitioned animals culled from the herd in which it was transitioned must be sold on the conventional market. These animals cannot under any circumstance be sold on the organic market.

Organic producers seeking to increase their herds must exclusively purchase organic animals. The preamble of the December 21, 2000 Federal Register notice for the National Organic Program Final Rule states specifically that, “[a]fter the dairy operation has been certified, animals brought on to the operation must be organically raised from the last third of gestation.”⁵ To equate transitioned animals with those animals managed organically from the last third of gestation devalues what constitutes “organic animals.” It would also unfairly penalize producers who invest more money in raising organic dairy animals from the last third of gestation. This unfair economic advantage afforded to transitioned animals is a large loophole in the regulation that has facilitated abuse of the current rule. To eliminate this abuse of the system, the door to transitioned dairy replacement animals must be permanently locked after the one-time transition has occurred.

Time has come to require organic breeder stock

AMS/NOP states that the proposed rule is meant not only to create greater consistency in the standard for the transition of dairy animals into organic production, but also to clarify the management of breeder stock. It further states that doing so will “maintain consumer trust in the consistency of the Organic seal.” CFS agrees and that is why we believe that now is the time, during the development of the origin of livestock regulations, to strictly require the use of organic breeder stock. A short phase-out/phase-in period with a strict deadline to end the allowance of non-organic breeder stock must be implemented to prevent market disruptions.

Amending the origin of livestock standards represents an opportunity for AMS/NOP to strengthen the standards regarding management of breeder stock by requiring breeder stock to be under continuous organic management. The NOSB agrees with this line of thinking and practice. In fact, in May 2003, the Board recommended this improvement and sought to require “operations to continuously manage all breeder stock as organic if they

⁴ *Id.*, at 23462.

⁵ *See* 65 Fed. Reg. 80548, 80684 (Dec. 21, 2000), at 80570.

were brought onto an organic farm to produce organic offspring.”⁶ In the spirit of continuous improvement, it is imperative that AMS/NOP recognize that the organic dairy industry has grown substantially since the passage of OFPA, and that the current availability of organic animals as breeder stock warrants amending the requirement.⁷

Existing organic regulations prohibit organic livestock from being removed and managed on a nonorganic operation, and then being reintroduced into an organic herd.⁸ But, surprisingly, breeder stock are exempted from this provision. AMS/NOP has continued to justify this exemption based on the fact that only the offspring are sold, labeled, or represented as organically produced. However, allowing breeder stock to regularly move in and out of organic management severely undermines the integrity of the organic label in the same way as allowing the continuous transition of conventional herds. Organic farmers are required to closely manage all aspects of their organic production system, as documented in their Organic System Plan (OSP), and bringing in breeder stock that are managed conventionally contravenes this requirement. It violates OFPA’s general prohibition on any production or handling practice that is inconsistent with the organic program.⁹ As such, it is arbitrary, capricious, and contrary to law under the Administrative Procedure Act.¹⁰

Organic herd health is a basic concept of organic dairying and emphasizes practices intended to build natural immunities and strengthen immune systems in animals. Continuously transitioning breeder stock in and out of organic production goes against this basic concept. Organic dairy producers have little control over the breeder cow’s diet or environmental conditions during the time it is out of organic production and common, nonorganic practices may undermine the health and immune systems of organic calves. For example, dairy cows may be exposed to pesticide residues during the first two-thirds of gestation on non-organic operations. Many pesticides are lipophilic, bonding to fat cells, and pose a risk to the gestating calf during this crucial stage of development. As early as the 1960s, it was demonstrated that the organochlorine pesticide, dieldrin, led to contamination of calves with residues in utero that took one year to reduce to non-detectable levels.¹¹ Because they bond to fats, lipophilic pesticides may be detected in cow’s

⁶ See 80 Fed. Reg. 23455, 23477 (Apr. 28, 2015), at 23458.

⁷ Ed Maltby, Northeast Organic Producers Alliance (NODPA) (2015). Personal Communications by phone, July 21.

⁸ See 80 Fed. Reg. 23455, 23477 (Apr. 28, 2015), citing 7 CFR 205.236(b)(1).

⁹ 7 U.S.C. § 6512.

¹⁰ See 5 U.S.C. § 706(2).

¹¹ Braund, D.G. et al. (1968). “Placental transfer of dieldrin in dairy heifers contaminated during three stages of gestation,” *51(1) Journal of Dairy Science*, 116, Jan.

milk, posing another potential exposure pathway to an organic calf during weaning.¹² Research has also shown that exposure of a pregnant animal to toxicants or nutritional changes may negatively affect the health of future generations. For example, exposure to a toxicant during the sex determination stage of the fetus' development poses health risks to the direct offspring and any offspring that animal produces.¹³

In terms of reproductive techniques, a pregnant heifer brought onto the dairy no later than the last third of gestation is likely to be impregnated by reproduction methods used in conventional animal breeding that do not align with organic principles. Embryo transfer (ET) is a common breeding strategy in conventional animal husbandry, that "depriv[es] animals of natural mating behaviour and negatively affect[s] animal welfare and integrity. Furthermore...the way these techniques have been used has led to a decline in diversity as fewer breeds and founder ancestors are used for reproduction."¹⁴ In ET, hormones are used at different stages of the process, such as putting the female in heat in order to be receptive to the embryo(s).¹⁵ The use of such hormones is expressly prohibited and counterintuitive in organic production systems. Reproductive technologies such as somatic-cell nuclear transfer have been linked to large-offspring syndrome, symptoms of which include increased birth weight, organ overgrowth, difficulty breathing and standing, skeletal and immunological defects, and increased rates of fetal and neonatal death.¹⁶ Cloning has also been an approved reproduction technique for the U.S. dairy industry since 2008,¹⁷ and NOP determined that "cloning as a production method is incompatible with the Organic Foods Production Act (OFPA) and is prohibited under the NOP regulations."¹⁸ Requiring organic breeder stock is the only way to ensure that organic calves have not been bred with technologies that do not align with the organic standards.

One-time transition exemption must apply to established herds, not start-up dairies

The proposed rule states that, "[t]o be eligible for a transition, the proposal language specifies that the producer must start a new organic dairy farm or transition an existing

¹² Weber, C.I. et al. (2008). "Organochlorine pesticide residues analysis from cow milk: a review," *65(1-2) Bulletin UASVM Animal Science and Biotechnologies*, 43.

¹³ Feeney, A. et al. (2014). "Epigenetics and transgenerational inheritance in domesticated farm animals," *5 Journal of Animal Science and Biotechnology*, 48.

¹⁴ Nauta, W.J. et al. (2005). "Animal breeding in organic dairy farming: an inventory of farmers' views and difficulties to overcome," *53(1) NJAS*, 19.

¹⁵ *Id.*

¹⁶ Feeney, et al. (2014); E.M. Hallerman (2002). "Will Food Products From Cloned Animals Be Commercialized Soon?" *ISB News Report*, Nov., at 1.

¹⁷ U.S. Food and Drug Administration (2008). "FDA Issues Documents on the Safety of Food from Animal Clones," *Press Release*, Jan. 15, available at:

<http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2008/ucm116836.htm>.

¹⁸ National Organic Program (2008). *Cloning and Organic Livestock Production*, Jan. 15.

conventional dairy farm to organic certification.”¹⁹ CFS disagrees. To maintain organic integrity, we recommend that AMS/NOP change the language to limit this one-time transition exclusively to *existing conventional* producers seeking to transition their operations to organic. This one-time exemption should be thought of primarily as an incentive for conventional dairy producers to completely switch their operations to organic production.

In addition, AMS/NOP needs to require dairy producers transitioning their herd to organic to work with an accredited certifier during the entire transition period. Certifiers must not be obliged to certify operations that claim to have completed the transition without any prior communication or relationship with that operation. This situation opens up the possibility for the risk of fraud to take place when operations have not worked with their certifying agency during the entire transition process. The December 2000 notice of the Final Rule states that, a whole herd conversion “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 [emphasis added].”²⁰ CFS agrees. It is critical that steps are taken by AMS/NOP to ensure enforcement of this provision in the rule by explicitly stating that “producers seeking to implement the one-time transition must contact their local certifying agent prior to beginning the transition.”

CFS recommends that the rule explicitly require anyone seeking to establish a *new organic dairy farm* purchase organic animals only. The organic dairy industry has grown substantially since the passage of OFPA and the commercial availability of organic animals is no longer the significant barrier to entry that it was in 1990. Since they can be completely organic from the start, there is no need to extend the one-time transition exemption to new organic dairies. To require anything less lowers the integrity of organic and undermines the expected pathway to continuous improvement in the organic dairy industry. To make it easy for new organic dairies to locate organic animals, AMS/NOP must direct producers to ODAIRY and other organic mailing lists for assistance with purchasing an initial herd of organic animals.

AMS/NOP must harmonize organic poultry standards with origin of livestock standards

The proposed origin of livestock rule explicitly states that its implementation will not result in any changes being made to existing poultry requirements. This seems like an odd statement to make since it would stand to reason that there is consistency in the

¹⁹ See 80 Fed. Reg. 23455, 23477 (Apr. 28, 2015), at 23460.

²⁰ See 65 Fed. Reg. 80548, 80684 (Dec. 21, 2000), at 80570.

implementation of all rules related to organic animal production. As it stands, organic management of poultry is only required from the second day of life onwards. This exemption puts the standard for poultry below that of other organic livestock management requirements.²¹

While OFPA provides that “day old poultry” are exempt from the provisions generally applicable to livestock,²² this exemption is ambiguous because it does not address gestation or specify whether poultry are covered by the livestock provisions *prior to* the first day of life. Through its regulations, AMS/NOP, as the administering agency, has interpreted the exemption to mean that organic standards only apply to poultry beginning on the second day of life. When compared to the requirements for other organic livestock, this exemption is an obvious outlier.²³ It notably contradicts OFPA’s explicit purpose, which is “to assure consumers that organically produced products meet a *consistent* standard.”²⁴ Allowing this loophole weakens rather than strengthens the integrity of the organic label. It is plainly inconsistent with OFPA’s purpose and intent, and violates OFPA’s general prohibition on any production or handling practice that is incompatible with the organic program.²⁵ As such, it is arbitrary, capricious, and contrary to law under the Administrative Procedure Act.²⁶

More immediately, the decision to allow organic poultry to opt out of the important origin of livestock requirements further facilitates the organic poultry industry’s behavior of deliberately lagging behind the rest of the organic animal rearing industry. CFS strongly believes that this must immediately stop or the entire organic animal industry could suffer the consequences of this weakly-compliant organic sector.

Organic consumers have similar expectations for organic poultry as they do for organic livestock. The number one reason consumers buy organic chicken is their belief that it is produced without any antibiotics, according to a Kansas State University survey.²⁷ These expectations are significantly undermined when the first day of a chicken’s life is exempted from organic management and antibiotics are used. There seems to be no other reason why this continues to be permitted other than to allow the routine, nontherapeutic use of

²¹ See 80 Fed. Reg. 23455, 23477 (Apr. 28, 2015).

²² 7 U.S.C. § 6509(e)(1).

²³ See 80 Fed. Reg. 23455, 23477 (Apr. 28, 2015).

²⁴ 7 U.S.C. § 6501(2).

²⁵ 7 U.S.C. § 6512.

²⁶ See 5 U.S.C. § 706(2).

²⁷ Neufeld, L. (2002). *Consumer Preferences for Organic/Free Range Chicken*, Kansas State University Department of Agricultural Economics, Aug., available at: http://www.agmrc.org/media/cms/ksufreerangech_588c29a8ed362.pdf.

antibiotics as growth promoters, and as an attempt to combat substandard and crowded poultry living conditions.

From a public health perspective, it is essential to minimize the use of veterinary antibiotics that are analogous to drugs used in human medicine because of the real risk of creating antibiotic-resistant bacteria and contributing to the overall ineffectiveness of certain antibiotics to fight human diseases. Robert Martin of Johns Hopkins' Center for a Livable Future cast doubt on the true purpose of including an antibiotic component within vaccines, which is a common practice at conventional hatcheries. He speculates that the use of antibiotics provides an added benefit of promoting faster growth in the chicks.²⁸ Creating the conditions for organic hatcheries to emerge, through the establishment of high integrity organic poultry regulations, will effectively prohibit practices that contravene the principles of organic.

As is the case with large, confined animal operations, antibiotics are used because of overcrowding and minimal access of birds to the outdoors. Organic poultry has fallen far behind other species of livestock in meeting the high bar of integrity set for organic animal husbandry in OFPA. The organic poultry industry has noticeably lagged behind the other organic livestock sectors, and the large producers in particular have strongly resisted and lobbied against improvements perceived as economically burdensome, as CFS has documented in its report: *USDA Stalls Regulations to Improve Organic Poultry Living Conditions: Agency Hides Behind Faulty Economic Impact Assessment*.²⁹

Similar to the existing rule for dairy, the second day of life rule for poultry has allowed producers to transition conventionally-hatched chicks to organic management. Just as the continuous transition provision reduced incentives for dairy producers to purchase available organic cows, the lax origin standard for poultry has inhibited the development of certified organic chicken hatcheries that would ensure the differentiation of organic chicks from conventional at birth. Conventional hatcheries employ practices that are wholly incompatible with organic principles and standards, including antibiotic injections and beak trimming. Organic consumers pay a price premium for organic chicken because they want to avoid supporting these practices, common to the conventional poultry industry. If those practices do not change to match those of the organic livestock industry, consumer trust and confidence in organic poultry will wane, particularly in the face of the decision to eliminate antibiotic use by large conventional producers, like Tyson and Perdue.

²⁸ Philpott, T. (2014). "Wait, We Inject Antibiotics Into Eggs for Organic Chicken?!" *Mother Jones*, Jan. 15, available at: <http://www.motherjones.com/tom-philpott/2014/01/organic-chicken-and-egg-antibiotics-edition>.


²⁹ Tomaselli, P. & L. Bunin (2014). *USDA Stalls Regulations to Improve Organic Poultry Living Conditions: Agency Hides Behind Faulty Economic Impact Assessment*, Center for Food Safety, Apr.

Conclusion

The proposed origin of livestock rule demonstrates AMS/NOP's intention to continue improving the organic livestock standards, the cornerstone of the U.S. organic industry. In order to further promote the integrity of the organic label, AMS/NOP must attach the one-time transition exemption to the "responsibly connected person(s)" instead of the "producer," and should require only organic breeder stock. The rule must also explicitly require that anyone seeking to establish a new organic dairy farm to purchase only organic animals. Finally, to be consistent with OFPA, the agency must harmonize standards for all organic animals and immediately promulgate new rules for the origin of poultry that ensure birds are managed organically at the hatchery stage.

Thank you for the opportunity to comment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lisa J. Bunin". The signature is fluid and cursive, with the first name "Lisa" being particularly prominent.

Lisa J. Bunin, Ph.D.
Organic Policy Director

A handwritten signature in black ink, appearing to read "Cameron Harsh". The signature is cursive and somewhat stylized, with the first name "Cameron" being the most legible part.

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