



December 2, 2019

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*Re: Proposed rule on the Origin of Livestock*

Docket # AMS-NOP-11-0009  
ID: AMS-NOP-19-0038-0001

Dear National Organic Program:

The Cornucopia Institute submitted comments on the National Organic Program's (NOP) proposed rule on the Origin of Livestock ("proposed rule") in 2015. Due to regulatory inaction since 2015, Cornucopia submits this comment as an add-on to its previous submission.

Cornucopia's mission is, in part, to support economic justice for family-scale farming. Economic justice is key: the very livelihood of foundational organic farmers is at stake. Many family-scale dairies are seriously impacted by this problem because they do raise their own calves by feeding them organic milk. It is up to three times more expensive to raise an organic calf than to raise a conventional calf.

In the overview of the proposed amendments, AMS states that:

Under this proposal, once a producer completes its transition of dairy animals into organic production, a producer would have two options for bringing any new dairy animals onto a producer's organic dairy farm(s) (whether for expansion or replacement purposes): (1) Add animals that are under continuous organic management from the last third of gestation; or (2) *add transitioned animals sourced from a certified organic dairy producer.* [Emphasis added.]

The second notation in this description is problematic for several reasons.

While the NOP seems to acknowledge in their "Summary of Provisions" and *overview* that the intent of the proposed rule is that producers who only raise heifers for sale to organic dairy farms

(and do not milk animals) would not be eligible to transition conventional animals to organic,<sup>1</sup> the actual effect of the language does not disallow this practice. This is, in part, because “dairy farm” is defined in the proposed rule as “a premises with a milking parlor where *at least one lactating animal* is milked.”

In addition, the language in the rule reads that for transitioned animals:

After the 12-month period ends, transitioned animals may produce organic milk *on any organic dairy farm* as long as the animal is under continuous organic management at all times on a certified organic operation. [Emphasis added.]

This combined language allows new businesses to be started for the purpose of converting conventional animals to organic—as long as they have one “token” lactating animal. These pop-up businesses can then sell their converted cattle to “any organic dairy farm.” This opens the door to practices similar to what is decimating ethical organic dairies right now: allowing new businesses to be created for the purpose of converting conventional animals to organic, which can then be “sold” or otherwise used on certified organic dairies.<sup>2</sup> Ultimately, there is nothing in the language of the proposed rule itself to prevent the problem of cycling conventional animals into organic dairy.

This is a serious loophole that threatens to undermine the stated intent of this proposed rule.

As an addition to our 2015 comments on the proposed rule, Cornucopia requests that the NOP act as follows in these differing scenarios:

**1. If the NOP adopts the current proposed rule as-is, *guidance for accredited certifiers and farmers* must be immediately developed and published in conjunction with the final rule to ensure that the loophole, as described above, is explicitly outlawed.** Under no circumstances must conventional dairy animals be allowed to be cycled continuously into organic management. It appears the intent of the NOP is to prevent this action, but the language of the rule itself does not have that legal clout. *Intent does not make enforceable policy; rulemaking language does.*

**2. If any changes are made to the language of the proposed rule, the focus should be on preventing *any* cycling of conventional animals into organic dairy.** Cornucopia made several suggestions to this end in our 2015 comments. In addition to these suggestions, the NOP could use other strategies to prevent abuse. Perhaps the simplest solution would be to explicitly require that all organic dairy animals *must be raised organically from the last third of gestation* if they

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<sup>1</sup> The NOP’s overview states: “The proposal would define a dairy farm as a “specific premises with a milking parlor where at least one lactating animal is milked.” For the purpose of this definition, a milking parlor should be considered a physical structure (e.g., barn, parlor) in which dairy animals are milked. Because the dairy farm definition, in part, drives the eligibility for a producer to transition animals to organic production, this action would mean that producers that only raise heifers for organic dairy farms would not be eligible to transition conventional animals to organic. *Such producers do not milk animals and, therefore, would not be considered eligible for the one-time transition exception.* However, such producers could continue raising heifers for organic dairy farms as long as the animals were under continuous organic management from the last third of gestation.” [Emphasis added.]

<sup>2</sup> While Cornucopia acknowledges that it will be more difficult to achieve the same results, the cycling of conventional animals into organic dairy is *so lucrative* as to make starting and then closing new businesses for the purpose of converting conventional animals worthwhile. The only significant expenses incurred by these businesses would be organic certification fees.

are not part of a farm's one-time transition and that transitioned animals cannot be used on another organic dairy farm. Clear language *should* be added to the rule to prevent the purchase and use of outside animals that have been transitioned (i.e. that have come through *another* "dairy farm's" one-time transition) but instead only purchase outside animals that were organic from the last third of gestation.

The ideal organic dairy grows by using the stock born each year on-farm to replace old cows or grow their herd. They *do not* buy cattle from off-farm unless they are planning on a serious expansion all at one time. This means that the most ethical organic dairies that are not planning any growth will sell organic heifers and/or steers each year (this additional source of income dried up due to the origin of livestock abuses, leading to more economic injustice). For these dairies, requiring the purchase of new animals that have been organic since the last third of gestation would actually revitalize the market for their organic calves and heifers.

**In all cases, *expediency in action and clarity in the language of the rule itself is needed.***

The dairy industry is in a serious crisis. As regulatory processes continue to linger, many dairy farmers are losing their livelihoods, their homes, and a way of life that has spanned generations.<sup>3</sup> Consumer confidence in organic dairy is compromised when authentic organic dairy farmers struggle to survive against abuses of the current rule. It is past time for the NOP to act and close the loopholes that have plagued this industry for too long. The NOP must immediately take the regulatory action required to ensure the survival of organic dairy, a longstanding cornerstone of the organic movement.

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<sup>3</sup> For more on the crisis in organic dairy, Cornucopia has a comprehensive web posting on the issue: <https://www.cornucopia.org/2019/08/the-crisis-in-organic-dairy/>