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National Organic Program
USDA-AMS-NOP,
1400 Independence Ave. SW, Room 2642-S, Stop 0268,
Washington, DC 20250-0268

RE: Origin of Livestock; Reopening of Comment Period

*Document Number AMS-NOP-11-0009
NOP-21-04PR*

Dear National Organic Program:

The following comments are submitted to you on behalf of The Cornucopia Institute, whose mission is, in part, to support economic justice for family-scale farming.

In answer to the questions posed in this re-opened comment period, Cornucopia refers to our previous comments on the Origin of Livestock topic (OOL) while adding these additional answers in response to the specific questions addressed in this comment period.

Prohibit movement of transitioned animals

The final rule should explicitly prohibit organic dairies from acquiring transitioned animals to expand or replace animals to produce organic milk. If organic dairy operations need to expand or replace animals to produce organic milk, they should only be allowed to purchase or use livestock that have been under continuous organic management from the last third of gestation.

Preventing any sale or movement of cattle converted under the one-time exception is a necessary piece of this regulation. Under existing regulation, businesses can raise and transition heifers under the allowed one-time exception, sell or transfer those animals to another operation or business partner, dissolve the original business, and start anew the next year. This subterfuge already occurs within the industry, and part of the effect of this rulemaking should be to stamp out this practice.

Cornucopia supports changing the rule to clearly distinguish between transitioned livestock and those that were under continuous organic management from the last third of gestation. Cattle that have gone through the one-time allowed transition should *never be allowed* to be sold, and should only be allowed as organic livestock on the operation that originally transitioned the animals under the limited one-time exception for newly certified organic dairy producers.

While we acknowledge that non-compliance to the organic rules can occur at any scale, higher-risk entities tend to be large operations that supply a larger share of the organic milk in the marketplace. Smaller operations are most impacted by the lack of origin of livestock rulemaking, and there is much existing land and infrastructure to support growth in small organic dairy numbers. As always, the National Organic Program (NOP) should take a risk-based approach.

To help with that concern, Cornucopia also recommends adding further restrictions to the allowed one-time transition for new operations. Specifically, the number of animals a new organic operation is allowed to transition should be *capped* at a number of cows that is reasonable for a *small* dairy operation. We recommend this cap to be in the range of 50 to 75 cows.

Without this specificity in the rulemaking, the continuous cycling of animals in and out of conventional systems will likely continue.

Define the regulated entity clearly to avoid loopholes

Clarity and specificity in how a regulated entity should be defined is critical. In the new rulemaking, Cornucopia recommends the use of “operation” rather than “producer” in this context.

However, simply changing the term in regulatory language is not sufficient. The new regulation must prevent the use of the one-time exemption by the same person(s) under multiple entities and/or businesses. A newly certified entity (however configured) should not be eligible for the one-time transition of a conventional dairy herd if they were connected with a business or entity that already used a one-time exception. We recommend this restriction exist in perpetuity because, as the market recovers from the harm of not having a clear origin of livestock rule, there will be more truly organic stock available for purchase.

Cornucopia also recommends language clarifying that any "responsibly connected person" who transitions a herd must be bound by the same limit as the operation they are connected to (meaning any person who is “responsibly connected” to an operation that has used the one-time transition of conventional animals should be barred from doing so again as a person responsibly connected to another operation). This would further protect the industry from “new” sham businesses starting each year for the purpose of producing replacement animals.

These precautions should not limit the sale and movement of truly organic animals that are organic from the last third of gestation.

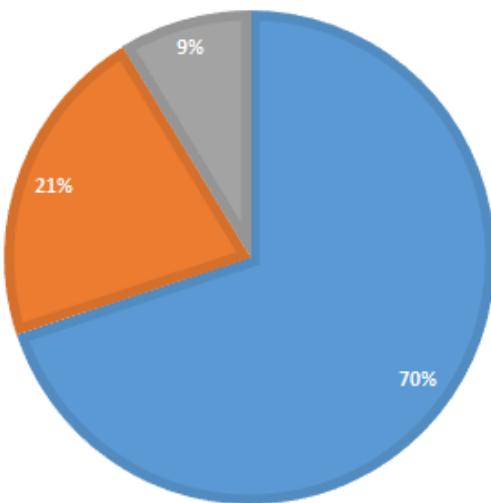
Implementation timeframe, cost estimates, exceptions to one-time allowance

1. Cornucopia agrees that all requirements should be implemented upon the effective date of a final rule. There should be no extended implementation timeframe—the industry has been asking for this rulemaking for many years and all operations and certifiers are *already on notice*. Cornucopia would accept an exception for any transition that was already approved by a certifying agent at the time the rulemaking is enacted.

Cornucopia conducted a survey of USDA certified organic dairy farmers and collected 174 responses by mail and email (please see the surveys attached to this comment for the raw data and charts below that summarize some of the data). Respondents largely reported that they wanted to see the rulemaking implemented immediately, regardless of dairy size (see chart C1).

C1: SUGGESTED IMPLEMENTATION TIMEFRAME

- It should be implemented immediately (as soon as the final rule is effective).
- There should be an “implementation period” where dairies are given time to comply with the requirements.
- Other

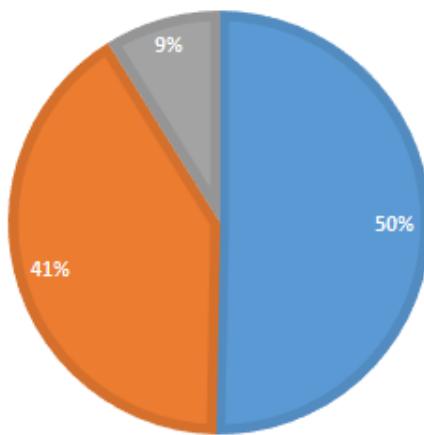


2. The Regulatory Impact Analysis/Regulatory Flexibility Analysis does not appear to have appropriately accounted for the impact this rulemaking would have on small to mid-sized organic dairies. Following a risk-based approach, the NOP should take into account the impact on the largest number of dairies, rather than the comparatively few entities producing a greater market share of the organic milk. Localized producers provide greater benefits to their communities and local environment (including ecosystem services) and help to revitalize and support rural communities, when compared with national operations. The fact that some regional certifiers do not allow the continuous cycling of livestock, while others do, should also be taken into account. Certifier disagreement creates an uneven playing field which has affected some regions more than others.

A majority of Cornucopia’s 174 survey respondents (as of July 12, 2021) noted that the lack of an OOL rule created a negative economic impact on their operation (see chart A1). Among respondents that reported “no noticeable impact” on their operations, several added comments that they still believed rules were needed (see attached raw data from the survey). Among those that responded with “other,” some noted that they didn’t know the specific economic impact but predicted that it was likely negative (some referenced the oversupply of milk or loss of organic integrity).

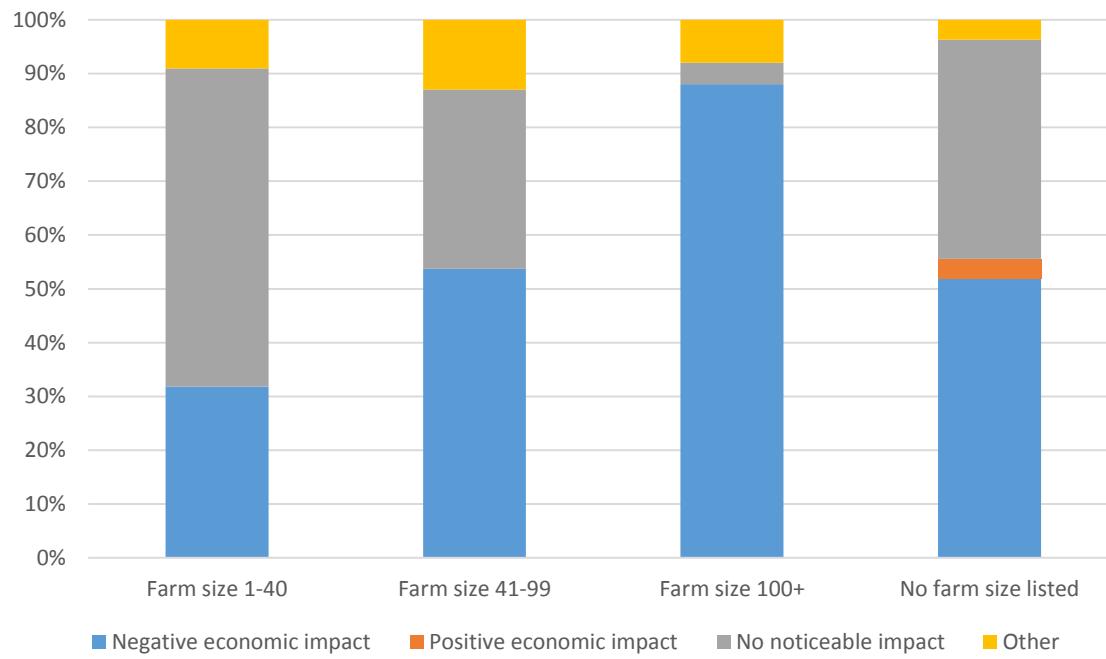
A1: HOW HAVE THE LACK OF RULES AND CERTIFIER CONSISTENCY CONCERNING THE ORIGIN OF LIVESTOCK IMPACTED YOUR OPERATION?

■ Negative ■ No noticeable ■ Other



Further, of the 174 respondents, there were clear trends when breaking down respondents by dairy size (the number of dairy cattle on the operation). Dairies milking over 100 cows were more likely to report a negative economic impact than operations that were milking 40 cows and under (see chart A2). (Note that the largest dairy that responded to our survey milks 3,500 cows.)

A2: Economic Impact By Dairy Size



Surveyed dairy farmers were asked to estimate the amount of income lost (or gained) annually due to lack of consistency in the origin of livestock rules (these comments can be found in the raw data spreadsheet attached to this comment). Predicted losses ranged from \$10,000 to approximately \$152,800 annually.

Other answers attributed losses to specific causes:

- A producer milking 32 cows noted that there was a: “[Negative economic impact] with a predicted \$2,000 loss annually. When I started Organic dairy in 2017, we paid \$2,500-\$3,000 for good organic cows. Now when we have extra cows, we can't get more than \$1,500-\$2,000 for them because guys say, they can get heifers [for] \$1,500 from dealers who bring them in from the Midwest. Are these really organic?”
- “With big dairies doing this, it is flooding the organic milk market, so us small farmers don't get as good a price for our milk.”
- “Lower cost of production among our competitors in the milk [market] suppresses prices for everyone when supply exceeds demand. In addition, limited opportunities to sell surplus animals equals low values for all organic cattle in the [market] & on our balance sheets.”
- “I know that there has been an oversupply since 2017 when I certified and my milk income dropped 30 percent or more.”
- “Consumer trust is [undermined] so we work on education & trusting us as individuals since broad organic labeling has proven untrustworthy...”

3. Apart from the temporary variances already allowed in some scenarios (found in § 205.290 and the allowance for re-transition following federal or state emergency treatments found in § 205.672), there should be no exceptions allowed in this rulemaking. There should be a single one-year transition allowed only for *new operations*. As already discussed, how a new operation is defined must include risk-based protections premised on whether that operation is connected with an operation that has already gone through the allowed one-time transition of a conventional herd.

Cornucopia’s Organic Dairy Survey

The final rule should prohibit certified organic dairy operations from acquiring transitioned animals to expand or replace animals to produce organic milk. Cornucopia’s own research of the organic dairy marketplace supports these comments throughout.

Cornucopia mailed a survey to all certified organic dairies in the Organic Integrity Database.

All surveys completed and returned to Cornucopia before the comment period closed are attached to this comment [Attachment2-Cornucopia-Origin-of-Livestock-Survey-2021-ScannedDocs-07122021.pdf]. In addition, Cornucopia later released an online version of the survey questions. The raw data from those online respondents is captured along with the raw data from the mailed surveys in the attached excel sheet [Attachment1-Cornucopia-Origin-of-Livestock-Survey-2021-RawDataResults-07122021.xlsx]. Names of respondents have been stripped from this data to preserve their anonymity. All dairy farmers were also encouraged to make their own comments to the National Organic Program.

The survey questions were posed as follows:

1. **Please describe your dairy business.** *Please check all that apply and/or explain below.*

- Single farm/single supplier
- Multiple farms/locations supplying business

Total number of cattle milked, on average, over the past two years?

2. **How have the lack of rules and certifier consistency concerning the origin of livestock for organic dairy impacted your operation?** *Please check all that apply and/or explain below.*

- Negative economic impact (with a predicted \$_____ loss annually)
- Positive economic impact (with an average \$_____ savings annually)
- No noticeable impact
- Other (please describe)

3. **If the USDA prohibited organic dairies from acquiring *transitioned animals* (organic cattle that *are not* certified organic since the last third of gestation) would there be any impact (especially economic) on you and/or your business?**

- Negative economic impact (with a predicted \$_____ loss annually)
- Positive economic impact (with a predicted \$_____ savings annually)
- No noticeable impact
- Other (please describe)

4. **Do you foresee needing to buy *transitioned cattle* anytime in the future?**

- No, we only utilize livestock that are certified organic since the last third of gestation.
- Yes, we may replace herd members with transitioned animals.
- Yes, we may grow our herd with transitioned animals.
- Other (please explain)

5. **What's your preferred timeframe for the implementation of Origin of Livestock Rulemaking?**

- It should be implemented *immediately* (as soon as the final rule is effective).
- There should be an “implementation period” where dairies are given time to comply with the requirements.
- Other (please explain)

ATTACHMENTS

1. Raw survey data (Attachment1-Cornucopia-Origin-of-Livestock-Survey-2021-RawDataResults-07122021.xlsx): This attachment includes all the raw data from the survey Cornucopia conducted by mailing and then e-mailing the Organic Integrity Database mailing list for certified organic dairies. This raw data comes from *both* the mailed-in copies and an electronic version of the survey located on our website. The cutoff date for entering received emailed surveys was July 12, 2021.
2. Scanned survey file (Attachment2-Cornucopia-Origin-of-Livestock-Survey-2021-ScannedDocs-07122021.pdf): This attachment to the comment includes scanned copies of all the returned physical copies of the survey Cornucopia composed. The cutoff date for entering received physical copies of the survey was July 10, 2021.

NOTE: Cornucopia will continue to collect survey responses and data after the July 12, 2021 deadline. We will provide this data to the Agricultural Marketing Service, if desired, on an ongoing basis.