



July 12, 2021

Jennifer Tucker, Deputy Administrator,
National Organic Program, USDA-AMS-NOP
1400 Independence Ave. SW
Room 2642-So., Ag Stop 0268
Washington, DC 20250-0268.

RE: Document Number AMS-NOP-11-0009; NOP-21-04PR
RIN 0581-AD89

Dear Jennifer Tucker,

MOSA appreciates the opportunity to provide comments to the National Organic Program regarding the [proposed rule on the origin of livestock](#). MOSA certifies almost 2,100 organic operations throughout the United States, with the majority of our certified entities located in the Upper Midwest. Approximately 750 operations are certified for livestock. Approximately 600 are dairies and others are hog, beef, various livestock species and poultry. The average MOSA-certified cattle dairy herd size is less than 70 head milking. Under this proposed rule, a few operations MOSA certifies would no longer qualify for certification. The vast majority of dairy livestock operations certified by MOSA could comply immediately.

Our original comments and suggested rule edits submitted in 2015 still align with our thinking today, as do the additional comments we made in 2019, where we noted additional considerations for fiber due to the National List changes made for parasiticide use. We are encouraged by the forward movement with this Origin of Livestock Rule (OOL) and urge you to expedite the publication of a final rule with an immediate effective date. Further delay will continue to harm MOSA-certified dairy farms.

In addition to the comments we previously submitted, our responses to new questions follow.

- 1. Movement of Transitioned Animals:** We agreed with the NOP's original 2015 thinking that some movement or sale of transitioned animals is *to be expected and is practical to allow* and we do not agree with the alternative discussion about prohibiting movement of transitioned animals between farms. If this were to become the rule, an additional layer of recordkeeping would be necessary for MOSA and our clients-- records not currently required to be in place. Once livestock are transitioned, they are organic milk producing animals. We do not currently document which animals were transitioned and which were not. We do track which animals are eligible for slaughter, which is an indicator of transitioned status *in part*, but there are also other reasons animals may not be eligible for meat production, such as the use of parasiticides. We could determine which animals were transitioned by looking back at herd lists, but that would be an incredibly arduous task and it seems entirely unnecessary. A cow that can produce organic milk on one certified organic farm should be able to produce organic milk on another certified organic farm. We disagree that these animals would need to be sold

conventionally. We often see a farm family divide their existing herd to enable children to begin their own farm. The notion that this simple act would not be allowed would stifle this generational growth in the organic industry. Since it is unknown how many transitioned animals currently are being moved between organic operations, the regulatory impact of this change is unknown and unpredictable. We believe that the majority of dairy operations certified by MOSA conducted a transition allowance, meaning they did not purchase an already-certified herd. Tens of thousands of animals have been transitioned by MOSA-certified dairy operations in the course of our certification work. Growing the number of organic family dairy farms seems like a worthy goal, and one that would be adversely impacted by limiting the ability of those farms to acquire organic dairy stock. In our experience, farms that cannot afford to conduct a transition often build an organic herd through purchasing animals from existing herds - from operations that would not likely choose to sell their peak performing younger last third animals. If transitioned animals could not be part of the herd-building equation, we are concerned we would see a loss of growth in the organic industry. And not only would this significantly impact market availability of organic animals, but it also would impact sale prices for the organic dairy farmers selling animals. If we continue this line of thinking, we believe that the ability of a farmer to purchase an already certified herd would basically diminish, since the likelihood that the herd would be organic from the last third is slim to none.

In summary, we strongly support the NOP's original intent to allow for movement of transitioned animals between organic farms.

We believe that the change from the word "producer" to the newly defined term "dairy operation" will prevent operations that are not an *organic* dairy from performing continual transitions. See point 2.

2. **Regulatory Framework- operation vs producer:** We continue to support a change of regulatory language, however not simply by substituting the word *operation* in the place of the word *producer*. *Operation* is not a currently defined term, though it is used in the standards in over 250 instances. Certifiers are comfortable with this term and use it throughout our regulatory work. We specifically point to definitions for *certified operation*, *area of operation*, *handling operation*, and *split operation*, all of which give context to the different *operations* we certify. [NOP Instruction 2603](#) reinforces this thinking. In 2015, we suggested that the proposed definition for *dairy farm* be changed to *dairy operation*, and that the regulatory text in §205.236 replace the words *producer* and *dairy farm* with the newly defined term *dairy operation*. A dairy operation would be defined as,

An operation, with distinct physical premises locations identified, that is certified or is applying for certification of organic livestock and production of organic milk or milk products. The initial organic system plan must identify all premises locations included in the dairy operation.

The identification of all locations will help prevent new operations from being initiated for the sole purpose of transitioning animals for organic milk production. The inclusion

of the requirement for organic milk production will eliminate conventional dairies without the intent of selling organic milk from transitioning animals. The inclusion will also eliminate the current continual transitioning of nonorganic animals for organic milk production by heifer-rearing operations. The §205.236 Origin of Livestock practice standard changes we proposed in 2015 reflect this intent.

A dairy operation as defined in §205.2 may transition dairy animals into organic production only once. A dairy operation is eligible for this transition only when starting a new organic dairy operation or converting an existing nonorganic dairy operation to organic production. A dairy operation must not transition any new animals into organic production after completion of this one-time transition...

Our 2015 comments provided scenarios where limiting the transition allowance to an individual producer could negatively impact growth of the organic industry.

We encourage the program to adopt the changes we proposed in 2015.

3. **Implementation timeframe:** In our original 2015 comments, we advocated for an implementation period. In 2019, we advocated for immediate implementation. MOSA still supports an immediate implementation date, with active transitions to be completed within 12 months. We have already modified some policies (through re-interpretation of the current rule) to reflect the intention of this proposed rule, and are prepared to modify any additional policies that may be impacted. Over the last six years, we have been in regular communication with our clients about the proposed changes.
4. **Accuracy of the estimates in the Regulatory Impact Analysis (RIA)/Regulatory Flexibility Analysis:** MOSA encouraged clients to comment on the accuracy of the RIA. We noted that the primary costs were for replacement animals. This would be additionally impacted by changing the proposed rule to prohibit the movement of transitioned animals between organic farms.

The RIA baseline discussion acknowledges that the RIA focuses on bovine dairies and not sheep or goats. There are relatively few sheep or goat operations certified and so the impact to the overall dairy industry is minimal, but since there are fewer certified operations certified, the number of organic replacements is limited. The impact to individual non-bovine dairy operations could be significant. See point 5.

The RIA also commented on heifer-rearing operations. The data to reflect the impact was not available. MOSA's data supports minimal impact as discussed. Fewer than 100 animals per year are transitioned by MOSA certified heifer-rearing operations. Operations are aware of the proposed changes and could choose to modify their purchasing practices by only purchasing organic from last third heifers. MOSA agrees that production practices on these operations would continue to comply with the standards, but that without modifying purchasing practices, operations would no longer qualify for certification under the current proposed rule language of *dairy farm* or under our proposed definition for *dairy operation*. These operations would no longer qualify for even one transition allowance.

5. **Exceptions to the one-time transition allowance requirement:** Temporary variances *could* apply to all reasonable exception and/or hardship scenarios we can think of **if** we consider that such scenarios are “damage” caused by an “other business interruption,” as noted in the rule at §205.290(a)(2).

§205.290 Temporary variances.

(a) *Temporary variances from the requirements in §§205.203 through 205.207, 205.236 through 205.240 and 205.270 through 205.272 may be established by the Administrator for the following reasons:*

(2) Damage caused by drought, wind, flood, excessive moisture, hail, tornado, earthquake, fire, or other business interruption;
[Emphasis added]

The process for temporary variances is well established. We appreciated the guidance of [Instruction 2606](#) as we considered using the temporary variance standards for each scenario presented below. The following are scenarios where we could see that an additional transition, or a re-transition of the same animals could be necessary. Any such scenarios should be *exceptional* and not the *norm* on any farm. All scenarios that we present below *could be* situations where a client could request a variance:

- a. In the case that the transition is tied to a “producer”:
 - i. If a producer moves to a new location, and the new land is not yet eligible for organic production, they would not be able to re-transition their same herd or a new herd along with the new land. They would be required to start organic dairy farming at their new location with an organic herd, and only once the land is eligible for organic certification. The shift to “dairy operation” solves this situation since there would be a new operation-- a variance would not be necessary.
- b. In the case that the transition is tied to a “dairy operation”:
 - i. Goat and sheep dairy herds could be challenged to expand. Since the number of farms is slim, the number of replacements is also slim. When the herd is not producing a sufficient number of replacements on farm to sustain, there may be a need to bring in off-farm nonorganic replacements.
 - ii. Herds that have had a significant loss due to sickness, but not as a result of a management failure or a pest/disease outbreak, could be challenged to maintain herd size. For example, a goat or cow herd stricken with Johne's disease culls animals to keep the spread of the Johne's at bay but may have trouble finding Johne's-free animals to replace the culled animals. This could be a combination of market availability and disease pressure.
- c. In either case - whether the transition is tied to the “producer” or the “dairy operation,” if a farmer loses their buyer due to circumstances beyond their control and simply can't afford to maintain organic management (typically due to organic feed requirements), we think the farmer should be able to re-transition the *same animals* to organic farming if they obtain a new buyer. This is more of a “hardship” situation.

- d. Other scenarios could include family illness, death, or similar, which force an operation to temporarily cease operations. A re-transition would seem reasonable in such cases.

We do not think that there should be any scenarios enabling any operation to continually transition nonorganic animals to organic dairy production. While we appreciate a sound, reasonable and practical approach to enabling some situations, we strongly discourage the inclusion of any *loopholes*. The more we consider it, the more we find the idea of variances for individual circumstances to be sensible. All of the scenarios presented above could certainly be considered a *business interruption*. Further, the emergency treatment policy provides an additional layer of protection for organic dairy farmers in the case of a disease or pest outbreak requiring emergency treatment.

MOSA agrees wholeheartedly with the discussed benefits of the proposed rule. We agree that the specificity and clarity to the regulations will result in a more uniform application of the intended standards. We agree that the alternatives considered - continual transition or no transition allowance - are not viable options for the organic dairy industry.

Thank you again for the opportunity to provide comments. In summary, MOSA continues to be in support of the proposed changes to the origin of livestock rule. Our previously submitted rule edits and comments include suggestions to strengthen and clarify the standards proposed for change. MOSA and our stakeholders will greatly appreciate seeing a final rule published without further delay!

Please direct any questions to Jackie DeMinter, Certification Policy Manager.

Sincerely,

MOSA Certification Team