



May 26, 2021

Dear MOSA Clients:

The [Origin of Livestock proposed rule](#) has reopened for public comment. The [original rule](#) was published April 28, 2015, and fell inactive for a few years, then [a second comment period](#) was opened in 2019, and now a third comment period is open until 7/12/2021. All interested parties now have this additional opportunity to comment on the movement of transitioned animals, the terminology for the regulated entity, the implementation timeframe, the accuracy of the estimates in the Regulatory Impact Analysis, and possible exceptions to the transition allowance. Comments previously submitted do not need to be submitted again; they are already incorporated into the public record and will be fully considered in any future final rule. We are pleased to see movement on this rule and are hopeful for a final rule.

Please read this letter (and attached documents) for a summary of the proposed changes and specific questions, and for directions to submit comments to the National Organic Program (NOP).

The attached "table 2" includes a breakdown of the proposals, with an added space for your comments on each change. Feel free to submit the chart with your comments directly to the National Organic Program.

We've reviewed the proposed rule changes and distilled them down into these few succinct points. Some of MOSA's policies will change if this rule is implemented as written:

- Only one transition of dairy livestock allowed per producer. Multiple transitions will no longer be allowed. Once you're organic, you're organic.
- All animals purchased after the "one time transition exception" must be certified organic. The proposed rule allows for the purchase of transitioned animals. See the first request for comment below which could change this part of the proposed rule.
- All animals must complete transition at the same time. A lag-behind for young animals will no longer be allowed.
- All animals must follow transition rules. No feed less than 3rd-year-transitional will be allowed for **any** animal during the 12 month transition.
- Fiber bearing animals are now included in the rule and must be slaughter-eligible.
- There will be no changes to our breeder stock interpretation.

Does this action apply to you?

This action could apply to you if you are engaged in the dairy industry. If you are not sure if or how this action would affect you, please contact our office to discuss your Organic System Plan. Affected persons may include, but are not limited to:

- Individuals or business entities that are considering starting a new certified organic dairy farm.
- Existing dairy farms that are currently certified organic.
- Conventional dairy farms that are considering converting to certified organic production.
- Businesses engaged in raising heifers for sale to certified organic dairy operations.

Summary of Provisions

This proposed rule would update the regulation by explicitly requiring that milk or milk products labeled, sold, or represented as organic be from dairy animals managed organically since at least the last third of gestation, with a one-time exception for transition. This exception would allow a producer, as defined by the regulations, to transition nonorganic dairy animals to organic milk production one time, under specific conditions.

This proposal would specify that a producer (*e.g.*, an individual or corporation starting or operating a dairy farm) could transition nonorganic dairy animals to organic milk production one time over a single twelve-month period. The proposal would require that all transitioning animals complete the transition process at the same time. This twelve-month period is consistent with the Organic Food Production Act (OFPA) requirement for at least one year of organic management before milk from dairy animals can be sold as organic (7 U.S.C. 6509(e)(2)).

This proposal would specify that, once the transition into organic production is complete, a producer may not conduct any additional transitions. After the transition, the producer would only be able to expand the number of dairy animals or replace culled dairy animals on any dairy farm in two ways: (1) add dairy animals that had been under continuous organic management since the last third of gestation, or (2) add dairy animals that had already completed the transition via another dairy farm's one-time transition.

The proposal would define a dairy farm as "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 so, therefore, would not be considered eligible for the one-time transition exception. However, such producers could continue raising organic heifers under continuous organic management from the last third of gestation.

This proposed rule reiterates that breeder stock may be brought from a nonorganic operation onto an organic operation at any time. While the regulations prohibit organic livestock from being removed and managed on a nonorganic operation then returned to an organic operation (*e.g.*, cycling in and out of organic production), this provision does not extend to nonorganic breeder stock that are themselves not certified or eligible for slaughter, sale, or labeling as organic. Further, OFPA specifically allows breeder stock to be purchased from any source if the stock is not in its last third of gestation. A dairy operation has flexibility in its sourcing and management of nonorganic breeder stock after its organic offspring is weaned and before it begins the last third of gestation for the next offspring. However, operators must continue to prevent commingling of organic and nonorganic products and prevent contact of any organic production or products with prohibited substances (7 CFR 205.201(a)(5)). The USDA Agricultural Marketing Service (AMS) is proposing additional provisions for organic management of breeder stock when the breeder stock is directly contributing to the nourishment of organic offspring from the last third of gestation through the end of the nursing period.

The AMS is requesting comments on the following topics.

1. Should the final rule prohibit the movement of transitioned cows between organic operations?

The current proposed rule clearly allows the movement of organic transitioned cows between organic operations, so farmers are able to expand their herd or replace animals with purchased transitioned animals - animals that have completed their transition on another operation. Some comments received during the previous two comment periods oppose the movement of organic transitioned cows. Because of the comments, the NOP is soliciting views on this specific question.

MOSA supports allowing organic operations to purchase transitioned animals for herd expansion or replacement animals. Once animals are transitioned they are organic animals for milk production though they do not qualify for organic slaughter.

2. Should the rule use the term "producer" or "operation" to describe the regulated entity?

The current proposed rule allows for a "producer" to transition animals on a "dairy farm" one time.

MOSA's 2015 comments made the suggestion to allow for a "dairy operation" to transition animals one time. 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.

3. Is an additional implementation timeframe necessary for organic dairies to comply? If one is needed, provide comments on how long the implementation period should be, and why.

Implementation plan:

- Producers who are certified as of the effective date for any final action would be allowed to complete any transition that was already approved by their certifier. However, as of the effective date, certified producers would be required to source or raise any new animals managed organically from the last third of gestation, or source animals that have already completed their transition under another producer's one-time exception.
- As of the effective date, producers who are new applicants for organic certification (i.e., startup organic dairies or nonorganic dairies transitioning to organic production) would be allowed to use the transition exception once when first applying for organic certification.

MOSA supports an immediate implementation period.

4. The accuracy of the estimates in the Regulatory Impact Analysis. The cost estimates presented are based on USDA and industry data. Feedback from you is requested on the assumptions related to the costs and benefits. Submit supporting information where available. The analysis includes the cost to organic dairies if the change is made from allowing to prohibiting the movement of transitioned animals as organic between organic farms. *MOSA encourages clients to review the costs and benefits outlined in the Regulatory Impact Analysis (RIA) and to make comments as appropriate for your operation. See [Section II of the electronic Federal Register Notice](#). We've summarized the following points made by the RIA:*

- *No expected substantial economic impact to sheep and goat dairy farms.*
- *No expected cost for farms that raise their own replacements.*
- *No expected cost for farms that maintain heifers off-farm under organic management practices.*
- *No expected cost for nonorganic dairies converting for the first time.*
- *Average dairies should be able to raise enough of their own replacements and to expand in herd size.*
- *The price of a heifer that is organic from the last third of gestation may increase.*
- *The price of a half gallon of milk at the retail store may increase 2-3 cents, and is not a significant economic impact for consumers.*
- *There is no data available on the number of animals that are transitioned to organic production annually.*
- *If the movement of transitioned animals is prohibited, dairy farms that regularly transition heifers or regularly purchase transitioned replacement heifers after initial transition would be required to purchase potentially higher cost organic (from the last third of gestation) replacement heifers or raise their own offspring. (Transitioned animals would be sold conventionally. Operations selling transitioned animals could see a decrease in sale price.) Sellers of organic (from the last third) animals would benefit from the higher sale price.*
- *A low number of operations purchase milk cows; more purchase heifers.*
- *Dairy operations that purchase transitioned animals would need to modify their buying practices.*
- *Heifer-rearing operations would be required to source organic (from the last third) calves to raise under organic management practices to sell them as organic animals. No operation would be able to conduct multiple transitions of conventional animals.*
- *Alternatives considered allowing continual transition, and prohibiting all transitions.*

MOSA strongly encourages you to consider how the proposed rule and potential changes to the proposed rule could impact your operation and submit feedback.

5. Should there be any exceptions to the one-time allowance requirement? Exceptions are not included in the proposed rule, but the current regulations do permit variances and allow for re-transitioning in the case of a Federal or State emergency treatment. Comments are sought on whether the rule should include any additional exceptions, and if so, what scenarios would warrant an exception.

MOSA encourages clients to consider scenarios under which you may need to conduct an additional transition.

Dates: Comments must be received by July 12, 2021.

Addresses: Interested parties may submit written comments on this proposed rule using one of the following methods:

- **Federal Rulemaking Portal:** <http://www.regulations.gov>. You can access a copy of the proposed rule, previous public comments received (over 1,500 in 2015 and 750 in 2019), and instructions for submitting public comments under docket number AMS-NOP-11-0009.
- **Mail or Fax:** Jennifer Tucker, Deputy Administrator, National Organic Program, USDA-AMS-NOP, 1400 Independence Ave. SW, Room 2642-S., Stop 0268, Washington, DC 20250-0268;

Instructions:

All submissions received must include the docket number AMS-NOP-11-0009; NOP-11-04PR, and/or Regulatory Information Number (RIN) 0581-AD08 for this rulemaking. Commenters should clearly indicate the topic and section number of the proposed rule to which your comment refers, state your position(s), offer any recommended language change(s), and include relevant information and data to support your position(s) (*e.g.*, scientific, environmental, manufacturing, industry, or industry impact information, etc.).

Thank you for your attention,

MOSA Certified Organic
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Attachments (3):

[NOP Q/A](#)

[Table 2](#)

[The rule](#)