

**Western Organic Dairy Producers Alliance
Comments on Proposed Rule
National Organic Program; Origin of Livestock
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Section 205.2 Terms defined

USDA Proposal

Section 205.2 Terms defined would be amended by adding five new definitions. Those definitions are:

Dairy farm. A premises with a milking parlor where at least one lactating animal is milked.

WODPA Comment

WODPA supports the definition of *Dairy farm* but is concerned about its implication for new dairies being built. Accordingly, WODPA believes a second definition is needed to address new dairy premises where a milking parlor is or will be built and lactating animals will be milked.

WODPA Recommendation

WODPA recommends amending the proposed definition of *Dairy farm* to read as follows:

Dairy farm. 1. A premises with a milking parlor where at least one lactating animal is milked. 2. A new dairy premises where a milking parlor is or will be built and lactating animals will be milked.

USDA Proposal

Organic management. Management of a production or handling operation in compliance with all applicable production and handling provisions under this part.

WODPA Recommendation

WODPA supports addition of the definition of *Organic management* as written.

USDA Proposal

Third-year transitional crop. Crops and forage from land, included in the organic system plan of a producer's operation, that has had no application of prohibited substances within 2 years prior to harvest of the crop or forage.

WODPA Comment

The definition of *Third-year transitional crop* does not recognize that there is more to land transition than not applying prohibited substances. Accordingly, this definition should be amended to provide that the producer's operation has been managed organically in accordance with § 205.202 for not less than 2 years prior to harvest of the crop or forage.

WODPA Recommendation

WODPA recommends amending the proposed definition of *Third-year transitional crop* to read as follows:

Third-year transitional crop. Crops and forage from land included in the organic system plan of a producer's operation, that has been managed organically in accordance with § 205.202 for not less than 2 years prior to harvest of the crop or forage.

USDA Proposal

Transitional crop. Any agricultural crop or forage from land, included in the organic system plan of a producer's operation, that has had no application of prohibited substances within one year prior to harvest of the crop or forage.

WODPA Comment

The definition of *Transitional crop* does not recognize that there is more to land transition than not applying prohibited substances. Accordingly, this definition should be amended to provide that the producer's operation has been managed organically in accordance with § 205.202 for not less than 2 years prior to harvest of the crop or forage.

WODPA Recommendation

WODPA recommends amending the proposed definition of *Transitional crop* to read as follows:

Transitional crop. Any agricultural crop or forage from land included in the organic system plan of a producer’s operation, that has been managed organically in accordance with § 205.202 for not less than one year prior to harvest of the crop or forage.

USDA Proposal

Transitioned animal. A dairy animal that was converted to organic milk production in accordance with §205.236(a)(2); offspring borne to a transitioned animal that, during its last third of gestation, consumes third year transitional crops; or offspring borne during the one-time transition exception that themselves consume third year transitional crops. Such animals must not be sold, labeled, or represented as organic slaughter stock or for the purpose of organic fiber.

WODPA Comment

WODPA supports the text “A dairy animal that was converted to organic milk production in accordance with §205.236(a)(2);”

WODPA does not supports the text “offspring borne to a transitioned animal that, during its last third of gestation, consumes third year transitional crops; or offspring borne during the one-time transition exception that themselves consume third year transitional crops.”

OFPA Sec. 2110 (e)(2)(B) reads as follows: “Transition Guideline.—Crops and forage from land included in the organic system plan of a dairy farm that is in the third year of organic management may be consumed by the dairy animals of the farm during the 12-month period immediately prior to the sale of organic milk and milk products.” This provision applies to the animals of the farm that are being transitioned. It does not apply to offspring born to the transitioning animals. For a transitioning animal to produce a non-transition offspring she must be managed organically for a full year and consume a total feed ration composed of certified organic agricultural products throughout her transition. After that year her calves will be organic milk and meat animals.

WODPA supports the text “Such animals must not be sold, labeled, or represented as organic slaughter stock or for the purpose of organic fiber.”

WODPA Recommendation

WODPA recommends amending the proposed definition of *Transitioned animal* to read as follows:

Transitioned animal. A dairy animal that was converted to organic milk production in accordance with §205.236(a)(2); offspring borne to a transitioned animal that, during its transition consumed third year transitional crops; or offspring born during the 12-month transition period. Such animals must not be sold, labeled, or represented as organic slaughter stock or for the purpose of organic fiber.

Section 205.236 Origin of livestock

USDA Proposal

Section 205.236 Origin of livestock paragraph (a)(2) would be revised by replacing the existing language with the following:

(2) Dairy animals. A producer as defined in §205.2 may transition dairy animals into organic production only once. A producer is eligible for this transition only if the producer starts a new organic dairy farm or converts an existing nonorganic dairy farm to organic production. A producer must not transition any new animals into organic production after completion of this one-time transition. This transition must occur over a continuous 12-month period prior to production of milk or milk products that are to be sold, labeled, or represented as organic, and meet the following conditions:

WODPA Comment

Proposed § 205.236(a)(2) ties transitioning to a producer. On first read it appears to limit transitioning to a onetime event. It also appears to eliminate repeat transitions by a producer and to eliminate heifer ranches that transition conventional animals for purchase by dairy farm operations. In fact, USDA states in the preamble to the proposed rule that its purpose is to prevent a producer from transitioning multiple dairy farms. As evidenced by the following preamble text found on page 23461, first column, third paragraph, third sentence: “We did not choose the dairy farm by itself as the criterion for eligibility to transition because it would allow a given producer to transition dairy animals on multiple dairy farms over time.”

In reality the proposed language accomplishes the opposite relative to the one time transition because individuals can still open multiple dairy farms and transition animals. This is because of the nuances of the definitions of “producer” and “person.”

Section 205.2 defines “Producer” as “A person who engages in the business of growing or producing food, fiber, feed, and other agricultural-based consumer products.”

Section 205.2 defines “Person” as “An individual, partnership, corporation, association, cooperative, or other entity.”

WODPA’s interpretation is that because “producer” is a “person” and a “person” is not limited to an “individual,” you could transition dairy animals on your farm and then open a new dairy farm under a new corporate name and transition the dairy animals on that new farm. You would be prohibited from transitioning additional animals on either farm but you could open a third farm under yet another corporate name and be entitled to the one-time transition.

To resolve this problem WODPA requests amendment of the first sentence by adding to the end thereof “; regardless of the number of partnerships, corporations, or other entities the producer may form or enter into.” WODPA also requests insertion of the word “single” in the second sentence immediately before the word “transition.”

These additions will enable the regulation to accomplish the USDA's stated purpose. They will also place all dairy farm operations on a level playing field relative to dairy animal replacement.

Proposed § 205.236(a)(2) limits transition to a producer who 1) starts a new organic dairy farm or 2) converts an existing nonorganic dairy farm. WODPA supports this provision.

Proposed § 205.236(a)(2) provide for a single 12 month transition of dairy animals. WODPA supports the 12-month transition period for each animal. However, due to the challenges (e.g., funding, animal availability) that a new dairy can be expected to face in securing all of the animals desired for transition, WODPA believes the animals should each go through a 12-month transition but that the producer should be allowed 18 months to complete transitioning all of the animals. To that end, WODPA requests that fourth sentence end with the word organic and that a new sentence be added. The new sentence reads; "New dairies shall have an 18 month period to obtain and complete the 12-month transition of all animals."

WODPA supports limiting the transition of dairy animals to a onetime event thereby eliminating repeat transitions by a producer and the elimination of heifer ranches that transition conventional animals for purchase by dairy farm operations.

WODPA Recommendation

WODPA recommends amending proposed § 205.236(a)(2) to read as follows:

(2) Dairy animals. A producer as defined in §205.2 may transition dairy animals into organic production only once; regardless of the number of partnerships, corporations, or other entities the producer may form or enter into. A producer is eligible for this single transition only if the producer starts a new organic dairy farm or converts an existing nonorganic dairy farm to organic production. A producer must not transition any new animals into organic production after completion of this one-time transition. This transition must occur over a continuous 12-month period prior to production of milk or milk products that are to be sold, labeled, or represented as organic. New dairies shall have an 18 month period to obtain and complete the 12-month transition of all animals. The producer shall also meet the following conditions:

USDA Proposal

Section 205.236 (a)(2) subparagraph (i) would be added and read as follows:

(i) During the 12-month period, dairy animals must be under continuous organic management;

WODPA Recommendation

WODPA supports the addition of subparagraph (i).

USDA Proposal

Section 205.236 (a)(2) subparagraph (ii) would be added and read as follows:

(ii) During the 12-month period, the producer should describe the transition as part of its organic system plan and submit this as part of an application for certification to a certifying agent, as required in §205.401;

WODPA Comment

WODPA requests that subparagraph (ii) be amended to require that the OSP be submitted prior to the start of livestock transition. This would be accomplished by deleting the word “this” and inserting “for approval, prior to starting the transition,”

WODPA Recommendation

WODPA recommends that subparagraph (ii) be amended to read as follows:

During the 12-month period, the producer should describe the transition as part of its organic system plan and submit for approval, prior to starting the transition, as part of an application for certification to a certifying agent, as required in §205.401;

USDA Proposal

Section 205.236 (a)(2) subparagraph (iii) would be added and read as follows:

(iii) During the 12-month period, dairy animals and their offspring may consume third-year transitional crops;

WODPA Comment

Proposed subparagraph (iii) would expand the third-year transitional crops provision to include offspring of transitioning animals born prior to completion of the mother’s transition. This is a significant proposed change with adverse impacts on proposed § 205.236(a)(2) subparagraphs (iv) and (v), as well as the provisions of § 205.237(a) and § 205.239(a)(3).

OFPA Sec. 2110 (e)(2)(B) reads as follows: “Transition Guideline.—Crops and forage from land included in the organic system plan of a dairy farm that is in the third year of organic management may be consumed by the dairy animals of the farm during the 12-month period immediately prior to the sale of organic milk and milk products.” This provision applies to the animals of the farm that are being transitioned. It does not apply to offspring born to the transitioning animals. For offspring of transitioning animals to be organic, the transitioning animal must be managed organically for a full year and consume a total feed ration, throughout her transition, that is composed of certified organic agricultural products.

The consumption of third year transitional crops by a transitioning animal may be fine for an animal that will never be sold, labeled, or represented as organic slaughter stock. It is not fine, however, for the offspring of transitioning animals unless those offspring are classified as transition animals; which they should be if the mother consumes third year transitional crops at any time during her transition. A transitioning animal must complete its one-year transition and have consumed a diet of certified organic agricultural products throughout her transition to give birth to an organic offspring.

Further, proposed § 205.236(a)(2)(iii) is inconsistent with proposed § 205.236(a)(2)(iv) and § 205.236(a)(2)(v) since third-year transitional crops are not organic.

WODPA requests that USDA remove the words “and their offspring” from proposed § 205.236(a)(2)(iii).

WODPA Recommendation

WODPA recommends amending proposed subparagraph (iii) by removing “and their offspring” to read as follows:

(iii) During the 12-month period, transitioning dairy animals may consume third-year transitional crops;

USDA Proposal

Section 205.236 (a)(2) subparagraph (iv) would be added and read as follows:

(iv) Offspring born during or after the 12-month period are transitioned animals if they consume third-year transitional crops during the transition or if the mother consumes third year transitional crops during the offspring’s last third of gestation;

WODPA Comment

Proposed subparagraph (iv) contains two provisions:

1. Offspring born during or after the 12-month period are transitioned animals if they consume third-year transitional crops during the transition. WODPA agrees with this provision because third-year transitional crops are not organic. The provision does not address all areas of concern.
2. Offspring born during or after the 12-month period are transitioned animals if the mother consumes third year transitional crops during the offspring’s last third of gestation. The flip side of this is that the offspring would not be a transition animal if its mother total feed ration during the last third of gestation was composed of certified organic agricultural products.

OFPA Sec. 2110 (e)(2)(B) reads as follows: “Transition Guideline.—Crops and forage from land included in the organic system plan of a dairy farm that is in the third year of organic management may be consumed by the dairy animals of the farm during the 12-month period immediately prior to the sale of organic milk and milk products.” This provision applies to the animals of the farm that are being transitioned. It does not apply to offspring born to the transitioning animals. For a transitioning animal to produce a non-transition offspring she must be managed organically for a full year and consume a total feed ration composed of certified organic agricultural products throughout her transition. After that year her calves will be organic milk and meat animals.

WODPA Recommendation

WODPA recommends amending proposed subparagraph (iv) to read as follows:

(iv) Offspring born during the 12-month transition period are transitioned animals. Offspring born after the 12-month transition period are transitioned animals if their mother consumed third year transitional crops or any other nonorganic agricultural product at anytime during the 12-month period prior to the offspring’s birth.

USDA Proposal

Section 205.236 (a)(2) subparagraph (v) would be added and read as follows:

(v) Offspring born from transitioning dairy animals are organic if they are under continuous organic management and if only certified organic crops and forages are used from their last third of gestation;

WODPA Comment

OFPA Sec. 2110 (e)(2)(B) reads as follows: “Transition Guideline.—Crops and forage from land included in the organic system plan of a dairy farm that is in the third year of organic management may be consumed by the dairy animals of the farm during the 12-month period immediately prior to the sale of organic milk and milk products.” This provision applies to the animals of the farm that are being transitioned. It does not apply to offspring born to the transitioning animals. For offspring of transitioning animals to be organic, the transitioning animal must be managed organically for a full year and consume a total feed ration, throughout her transition, that is composed of certified organic agricultural products. Thus, offspring born of transitioning animals are themselves transition animals since their mother was not managed organically for a minimum of one year, including a total feed ration composed of certified organic agricultural products.

WODPA Recommendation

WODPA recommends removal of subparagraph (v).

USDA Proposal

USDA did not address the issue of a permanent identification system for transitioned animals.

WODPA Comment

WODPA supports requiring a permanent identification system for transitioned animals. This system should be a two part system of a left ear tag and a left ear tattoo or a left ear tag and a left hip brand. The ear tag would sport a large capital T. The tattoo or brand would be a large capital T. The two part system is necessary to provide visibility and permanency. Ear tags are not enough considering their tendency to fall off and be lost.

WODPA Recommendation

WODPA recommends adding a new subparagraph (v) to read as follows:

(v) All Transition animals shall be logged tracked and given a permanent identification. The identification system shall consist of a left ear tag marked with a large capital T and a left ear tattoo consisting of a large capital T or a left ear tag marked with a large capital T and a left hip brand consisting of a large capital T.

USDA Proposal

Section 205.236 (a)(2) subparagraph (vi) would be added and read as follows:

(vi) All dairy animals must end the transition at the same time;

WODPA Recommendation

WODPA supports the addition of subparagraph (vi).

USDA Proposal

Section 205.236 (a)(2) subparagraph (vii) would be added and read as follows:

(vii) Dairy animals that complete the transition are transitioned animals and must not be used for organic livestock products other than organic milk;

WODPA Recommendation

WODPA supports the addition of subparagraph (vii).

USDA Proposal

Section 205.236 (a)(2) subparagraph (viii) would be added and read as follows:

(viii) 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; and

WODPA Comment

Proposed subparagraph (viii) as written would allow the animals to be managed on a certified organic operation but it does not specify the kind of certified organic operation. Organic livestock should only be managed organically on a certified organic livestock operation. To avoid any misunderstanding the provision should be amended to clarify that the continuous organic management must occur on a certified organic livestock operation.

WODPA Recommendation

WODPA recommends amending proposed subparagraph (viii) to read as follows:

(viii) 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 livestock production or handling operation; and”

USDA Proposal

Section 205.236 (a)(2) subparagraph (ix) would be added and read as follows:

(ix) After the 12-month period ends, any new dairy animal brought onto a producer’s dairy farm(s) for organic milk production must be an animal under continuous organic management from the last third of gestation or a transitioned animal sourced from another certified organic dairy farm.

WODPA Recommendation

WODPA supports the addition of subparagraph (ix).

USDA Proposal

Section 205.236 Origin of livestock paragraph (a)(3) would be revised to read as follows:

(3) Breeder stock. Livestock used as breeder stock may be brought from a nonorganic operation onto an organic operation at any time, Provided, That the following conditions are met:

(i) Such breeder stock must be brought onto the operation no later than the last third of gestation if its offspring are to be raised as organic livestock; and

(ii) Such breeder stock must be managed organically throughout the last third of gestation and the lactation period during which time they may nurse their own offspring.

WODPA Comment

The Organic Foods Production Act Section 2110 [7 U.S.C. 6509] subsection (b) reads as follows: “Breeder Stock.—Breeder stock may be purchased from any source if such stock is not in the last third of gestation.” Black’s Law Dictionary (Ninth Edition) defines purchase as “The act or an instance of buying.” Their definition of buy says “See Purchase (1).”

Purchase is significantly different from brought which is the past tense of bring (to cause to appear). The use of brought in the absence of purchase can be interpreted as allowing for any kind of arrangement between the animal owner and the organic producer acquiring the animal. Especially, considering that producers and certifying agents are more likely to consult the regulations than they are OFPA. Accordingly, the word “purchased” must be included in the breeder stock provision.

WODPA does not support the last third of gestation provision of subparagraph (i).

Poultry, dairy animals, and breeder stock are all exceptions to the provisions of § 205.236(a). The last third of gestation provision of § 205.236 (a) originates from OFPA’s Section 2110 [7 U.S.C. 6509] subsection (b) breeder stock provision. This is the only provision in OFPA referencing last third of gestation.

It is WODPA’s position that OFPA does not prohibit a higher standard for breeder stock than last third of gestation. To the contrary, there is precedence for regulations that establish a higher standard than that of a Statute. NOP’s labeling requirements are one example. Specifically, OFPA’s Section 2106 [7 U.S.C. 6505] subsection (c): 1) exempted processed food from the provisions of subsection (a); 2) provided for the Secretary’s regulation of how the word “organic” would appear on the principal display panel of products containing at least 50 percent organically produced ingredients; and 3) provided for the Secretary’s regulation of how the word “organic” would appear on the ingredient listing panel of products containing less than 50 percent organically produced ingredients. Not only did USDA apply the provisions of subsection (a) to processed food it established a more rigorous 100, 95, and 70 percent labeling system for how the word “organic is used in labeling the percentage of organically produced ingredients. Thus, § 205.236(a)(3) can, and should, be amended to require that all nonorganic breeder stock animals be managed organically for one year prior to giving birth.

At subparagraph (ii) USDA provides that breeder stock must be under continuous organic management until the offspring are weaned from the breeder stock. USDA’s proposed provision

allowing the calf to nurse its mother constitutes the feeding of a nonorganic substance to the calf in direct violation of § 205.237. Further, this is a standard lower than that for the production of organic milk from transitioned dairy animals. Transitioning dairy animals must be managed organically for 12 full months before their milk is considered to be organic. We acknowledge that OFPA does allow such animals on a transitioning dairy farm to consume third year transitional crops, which are not organic. Even so, USDA is proposing a lower standard inasmuch as its proposal only provides for 3 months of organic feed consumption by the mother before allowing her to nurse her calf. It is WODPA's position that a calf born of a mother who consumed third year transitional crops would not be organic and would have to go through its own 12-month transition to organic. There is no transition provision for breeder stock. Thus, calves that nurse their mother are consuming conventional milk and are thereby conventional animals. Accordingly, WODPA opposes USDA's proposal to allow calves to nurse conventional breeder stock.

USDA's (ii) raises the question of whether breeder stock can be brought onto a transitioning farm during transition and whether the mother can consume third year transitional crops throughout last third of gestation and nursing. The answer should be no since a transitioning farm is not a certified organic operation. The breeder stock provisions should clearly identify the operation as a certified organic operation.

The cycling in and out of conventional breeder stock places organic producers who use organic breeder stock at a competitive disadvantage. Thus, WODPA opposes the in and out cycling of conventional breeder stock. WODPA supports a breeder stock provision making it clear that conventional breeder stock removed from organic management shall not be returned to organic management.

WODPA Recommendation

WODPA recommends amending proposed § 205.236(a)(3) to read as follows:

(3) *Breeder stock.* Livestock used as breeder stock may be purchased from any source and brought onto a certified organic livestock operation at any time, *Except,* That, nonorganic breeder stock must be managed organically for one full year prior to giving birth to any animal that will be sold, labeled, or represented as organic. Nonorganic breeder stock removed from organic management shall not be returned to organic management.

USDA Proposal

Section 205.236 Origin of livestock paragraph (b) would be revised, by adding the underlined text, to read as follows:

(b) The following are prohibited:

(1) Livestock, edible livestock products, or nonedible livestock products such as animal fiber that are removed from an organic operation and subsequently managed on a nonorganic operation may not be sold, labeled, or represented as organically produced.

(2) Breeder stock, dairy stock, or transitioned animals that have not been under continuous organic management since the last third of gestation may not be sold, labeled, or represented as organic slaughter stock.

WODPA Comment

Paragraph (b)(1) is a repeat of the existing requirement, except for the addition of “or nonedible livestock products such as animal fiber.” WODPA supports this clarifying amendment.

It is reported that some producers remove calves from organic management and then return them to organic management once they are heifers. Reportedly, this is done, on the organic operation, to get the calves through the difficult calf raising stage. Paragraph (b)(1) is insufficient to prevent this practice since the animals are not moved to a nonorganic operation. Thus, a new provision is needed that provides that livestock removed from organic management and subsequently managed nonorganically shall not be returned to organic management or sold, labeled, or represented as organically produced.

Regarding subparagraph (2), WODPA commends USDA’s intent in clarifying that transitioned animals shall not be sold, labeled, or represented as organic slaughter stock. WODPA points out, however, that all transitioned animals are dairy stock since the transition provisions only apply to dairy stock. The redundancy of referring to dairy stock and transitioned animals could lead some to believe that animals other than dairy stock are eligible for transition. Accordingly, the provision should be worded as: Breeder stock or transitioned animals (dairy stock), that have not been under continuous organic management since the last third of gestation shall not be sold, labeled, or represented as organic slaughter stock. This would provide the clarification without leaving the impression that more than dairy stock is eligible for transition.

WODPA’s § 205.236(a)(3) comment and recommendation includes the provision that nonorganic breeder stock must be managed organically for one full year prior to giving birth to any animal that will be sold, labeled, or represented as organic. In keeping with that recommendation WODPA believes that paragraph (b) needs to include a provision that offspring of breeder or dairy stock born to a mother not under continuous organic management for at least one full year prior to birth shall not be sold, labeled, or represented as organic slaughter stock.

WODPA Recommendation

WODPA recommends amending proposed § 205.236(b) to read as follows:

(b) The following are prohibited:

(1) Livestock, edible livestock products, or nonedible livestock products such as animal fiber that are removed from an organic operation and subsequently managed on a nonorganic operation may not be sold, labeled, or represented as organically produced.

(2) Livestock removed from organic management and subsequently managed nonorganically shall not be returned to organic management or sold, labeled, or represented as organically produced.

(3) Breeder stock or transitioned animals (dairy stock), that have not been under continuous organic management since the last third of gestation shall not be sold, labeled, or represented as organic slaughter stock.

(4) Offspring of breeder or dairy stock born to a mother not under continuous organic management for at least one full year prior to birth shall not be sold, labeled, or represented as organic slaughter stock.

USDA Proposal

Section 205.236 Origin of livestock paragraph (c) would be revised, by adding the underlined text, to read as follows:

(c) The producer of an organic livestock operation must maintain records sufficient to preserve the identity of all organically managed animals, including whether they are transitioned animals, and edible and nonedible animal products produced on the operation.

WODPA Recommendation

WODPA supports this clarifying amendment to § 205.236(c).

Section 205.237 Livestock feed

USDA Proposal

Section 205.237 Livestock feed paragraph (a) would be revised by changing “§205.236(a)(2)(i)” to “§205.236(a)(2)(iii)” to read as follows:

(a) The producer of an organic livestock operation must provide livestock with a total feed ration composed of agricultural products, including pasture and forage, that are organically produced and handled by operations certified to the NOP, except as provided in §205.236(a)(2)(iii), except, that, synthetic substances allowed under §205.603 and nonsynthetic substances not prohibited under §205.604 may be used as feed additives and feed supplements, Provided, That, all agricultural ingredients included in the ingredients list, for such additives and supplements, shall have been produced and handled organically.

WODPA Comment

This is no mere amendment to update the reference to § 205.236(a)(2)(i) since § 205.236(a)(2)(iii), as proposed, would expand the third-year transitional crops provision to include offspring of transitioning animals born prior to completion of the mothers transition.

In its discussion of § 205.236(a)(2)(iii) above, WODPA pointed out that the provisions of OFPA Sec. 2110 (e)(2)(B) apply to the animals of the farm that are being transitioned. It does not apply to last third of gestation offspring of transitioning animals. Last third of gestation offspring are organic and must receive 100 percent organic feed, including milk.

OFPA Sec. 2110 (e)(2)(B) reads as follows: “Transition Guideline.—Crops and forage from land included in the organic system plan of a dairy farm that is in the third year of organic management may be consumed by the dairy animals of the farm during the 12-month period immediately prior to the sale of organic milk and milk products.”

WODPA also noted in its discussion of § 205.236(a)(2)(iii) that the addition of the words “and their offspring” also conflicts with proposed § 205.236(a)(2) paragraphs (iv) and (v) since third-year transitional crops are not organic.

WODPA recommended that proposed § 205.236(a)(2)(iii) be amended by removing “and their offspring.”

WODPA Recommendation

WODPA reaffirms its recommendation that proposed § 205.236(a)(2)(iii) be amended by removing “and their offspring” to read as follows:

“(iii) During the 12-month period, transitioning dairy animals may consume third-year transitional crops;”

Section 205.239 Livestock living conditions

USDA Proposal

Section 205.239 Livestock living conditions paragraph (a)(3) would be revised by changing “§ 205.236(a)(2)(i)” to “§ 205.236(a)(2)(iii)” to read as follows:

(3) Appropriate clean, dry bedding. When roughages are used as bedding, they shall have been organically produced in accordance with this part by an operation certified under this part, except as provided in §205.236(a)(2)(iii), and, if applicable, organically handled by operations certified to the NOP.

WODPA Comment

This is no mere amendment to update the reference to § 205.236(a)(2)(i) since § 205.236(a)(2)(iii), as proposed, would expand the third-year transitional crops provision to include offspring of transitioning animals born prior to completion of the mothers transition.

In its discussion of § 205.236(a)(2)(iii) above, WODPA pointed out that the provisions of OFPA Sec. 2110 (e)(2)(B) apply to the animals of the farm that are being transitioned. It does not apply to last third of gestation offspring of transitioning animals. Last third of gestation offspring are organic and must receive 100 percent organic feed, including milk. Thus, bedding that may be consumed by livestock must also be organic.

OFPA Sec. 2110 (e)(2)(B) reads as follows: “Transition Guideline.—Crops and forage from land included in the organic system plan of a dairy farm that is in the third year of organic management may be consumed by the dairy animals of the farm during the 12-month period immediately prior to the sale of organic milk and milk products.”

WODPA also noted in its discussion of § 205.236(a)(2)(iii) that the addition of the words “and their offspring” also conflicts with proposed § 205.236(a)(2) paragraphs (iv) and (v) since third-year transitional crops are not organic.

WODPA recommended that proposed § 205.236(a)(2)(iii) be amended by removing “and their offspring.”

WODPA Recommendation

WODPA reaffirms its above recommendation that proposed § 205.236(a)(2)(iii) be amended by removing “and their offspring” to read as follows:

“(iii) During the 12-month period, transitioning dairy animals may consume third-year transitional crops;”