



National Organic Standards Board

Kevin O'Rell
Chair
Colorado

May 12, 2006

Andrea Caroe
Vice Chair
California

Mark Bradley
Associate Deputy Administrator, Transportation & Marketing Programs
National Organic Program
Agricultural Marketing Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Room 4008-So., Ag Stop 0268
Washington, D.C. 20250

Bea James
Secretary
Minnesota

Gerald Davis
California

Rigoberto Delgado
Texas

Re: Docket No. TM-06-06-PR; National Organic Program—Revisions to Livestock Standards Based on Court Order (*Harvey v. Johanns*) and 2005 Amendment to the Organic Foods Production Act of 1990 (OFPA); 71 Fed. Reg. 24820 (Apr. 27, 2006)

Kevin Engelbert
New York

Dear Mr. Bradley:

Daniel Giacomini
California

The NOSB is pleased to submit comments concerning the U.S. Department of Agriculture (USDA) Agricultural Marketing Service's (AMS) proposal to amend the National Organic Program (NOP) regulations to comply with the final judgment in the *Harvey v. Johanns* case and the November 2005 amendments to OFPA.

Jennifer Hall
Washington

Huebert Karreman
Pennsylvania

Although the NOSB applauds the USDA's efforts to clarify the NOP regulations, there are concerns with some of the proposed revisions.

Michael Lacy
Georgia

Jeffrey Moyer
Pennsylvania

The NOSB believes that one standard for replacement stock should apply to all dairy operations once they convert to organic production. The NOSB went on record in this regard in a recommendation to the NOP dated May 14, 2003. We believe the language in the rule dealing with Origin of Livestock for dairy animals in 205.236 should be modified as shown in the following three paragraphs. It should be noted that in this public comment statement some changes have been made to the original 2003 recommendation. These revisions do not change the spirit or intent of the 2003 recommendation but have been made to clarify that intent.

Nancy Ostiguy
Pennsylvania

Joseph Smillie
Vermont

Julie Weisman
New Jersey

*Milk or milk products must be from animals that have been under continuous organic management beginning no later than 1 year prior to the production of the milk or milk products that are to be sold, labeled, or represented as organic. Except, that, crops and forage from land included in the organic system plan of ~~a~~ **the** 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 or milk products.*

*Once ~~an entire, distinct herd~~ **a dairy operation has** been converted to organic production, all dairy animals, **including all young stock whether born on or brought onto the operation**, shall be under organic management from the last third of **the mother's** gestation.*

The NOSB understands that the purpose of the current proposed rule change is to address the Harvey ruling and that NOP recognizes the need for rule change to address the “origin of livestock” for dairy animals’ issue. NOP has gone on record committing to future rule changes to deal with this issue. While the NOSB would like for the “origin of livestock” issue to be corrected immediately, if it is not possible to do so at the present time, we will work with NOP to move this issue forward to a rapid and acceptable conclusion as soon as possible.

In addition the NOSB provides the following comment in response to the ANPR with regard to section 205.606:

Language in the current section 606 has long been considered erroneous, because of the inclusion of the reference to “made with” products.

There is no requirement under OFPA for “made with organic...” products.

OFPA Sec 2111(a)(4)

(a) In General. For a handling operation to be certified under this title, each person on such handling operation shall not, with respect to any agricultural product covered by this title

(4) add any ingredients that are not organically produced in accordance with this title and the applicable organic certification program, unless such ingredients are included on the National List and represent **not more than 5 percent of the weight of the total finished product (excluding salt and water);**

A recommendation made by the NOSB in 2001, requested numerous technical corrections, including the removal of “made with” language from the heading of 205.606. This technical correction was never made. In fact there was no urgency to do so, since section 606 was largely being interpreted as a blanket allowance for the use of any non-organically produced agricultural products for all labeling categories, when its organic equivalent was not available. The court order in Harvey vs. Johanns makes it appropriate that this correction be made now.

The NOSB has a second, separate concern that the language for 205.606 proposed in the PR would make the wording of 606 substantially different than that of other sections of the Nation List. We believe that the language of the current rule is adequate as written, and that complying with it, as it is currently written, will achieve the requirements of the court. However, if the Program feels that language must be changed in order to satisfy the court, this Board suggests that further language be added to clarify that this section does not supersede other sections of the National List.

Because of the short comment period for this proposed rule it has been necessary for the NOSB to formulate this public comment quickly. The NOSB appreciates USDA's consideration of these comments and would like to collaborate with the NOP to further modify this language as needed to meet its intent.

Sincerely,

Kevin R. O'Rell

Chair - NOSB