

**FORMAL RECOMMENDATION BY THE
NATIONAL ORGANIC STANDARDS BOARD (NOSB)
TO THE NATIONAL ORGANIC PROGRAM (NOP)**

Date: April 29, 2010
Subject: Clarification of 205.238(c)(1)
Chair: Daniel G. Giacomini

Recommendation

The NOSB hereby recommends to the NOP the following:

Rulemaking Action:	<u> X </u>
Guidance Statement:	<u> </u>
Other:	<u> </u>

Summary Statement of the Recommendation (including Recount of Vote): The Livestock Committee is clarifying language in §205.238(c)(1) in the animal welfare recommendation dated 11/5/2009. Synthetic animal health care products must be listed on §205.603 to be allowed for use on organic livestock. Some of those allowed synthetic substances are annotated with a withholding time. The milk from organic livestock treated with these allowed synthetic substances allowed under §205.603 and annotated with a milk withholding time cannot be sold for human consumption during the time specified. This recommendation is to clarify language in the 11/5/09 recommendation that the intent and belief of the board is that this is still organic milk and may be fed to young organic livestock still receiving milk in their diet.

NOSB Vote: **Motion:** Jeff Moyer **Second:** Jennifer Hall

Board vote: Yes - 13 No - 1 Abstain - 0 Absent - 1

Summary Rationale Supporting Recommendation (including consistency with OFPA and NOP): The Organic Rule prohibits the feeding of non-organic feed to organic animals and does not allow the administration of any animal drug, other than vaccinations, in the absence of illness. The majority of the Livestock Committee, supported by NOSB action, believes that milk from animals being treated with substances allowed under §205.603 that have a withholding time may be fed to young organic animals still receiving milk in their diet, believing that said milk is organic milk produced from an organic animal under a withholding time restriction limiting its sale for human consumption, but is still organic milk. The Board acknowledged in discussion that a determination by the NOP that the said milk contained an animal drug and feeding such milk to a young organic animal in the absence of illness in that young animal could impact the implementation of this recommendation.

Response by the NOP:

Clarification of 205.238(c)(1)
National Organic Standards Board
Livestock Committee
March 1, 2010

I. Introduction

During the November 3-5, 2009 National Organic Standards Board Meeting, the Board passed an Animal Welfare Recommendation. From public comment, the Livestock Committee realized that a clarification of the intent of the additional language in that recommendation is needed. The Committee believes that the confusion lies not with the prohibiting of milk from animals treated with a prohibited substance not being allowed to be fed to organic livestock, but with the intent regarding animals treated with an allowed substance on §205.603 that has a withholding time.

II. Background

The treatment of organic livestock with prohibited substances removes that animal from being organic and prohibits the milk and milk products or meat from those animals to be sold as organic. The treatment of an organic livestock animal with an allowed synthetic (§205.603 Synthetic substances allowed for use in organic livestock production) does not take away the animal's organic status. However, if that substance carries a withholding time, then the milk or meat from that animal may not be marketed and sold as certified organic for a designated period of time. However, the cow does not lose her organic status; she is still organic.

Language in the November 2009 Animal Welfare Recommendation:

§ 205.238(c)(1) Sell, label, or represent as organic any animal or edible product derived from any animal treated with antibiotics, and substance that contains a synthetic not allowed under 205.603, or any substance that contains a nonsynthetic substance prohibited in 205.604. Milk from animals undergoing treatment with prohibited substances cannot be sold as organic or fed to organic livestock. Milk from animals undergoing treatment with substances having a withholding time cannot be sold as organic or fed to organic livestock during the withholding time.

The language in the final sentence of that section impacts not only many organic dairy farms that separate the calves from their mothers and raise them separately but the organic dairy farms and other livestock operations that raise the young stock by leaving them to nurse on their mother's milk.

III. Regulatory Framework

The Organic Food Production Act (OFPA) does not allow the feeding of non-organic feed to organic animals, nor does the Act allow subtherapeutic doses of antibiotics or the administering of medication in the absence of illness.

Under OFPA:

SEC. 2110. [7 USC 6509] Animal Production Practices and Materials.

(c) PRACTICES.----For a farm to be certified organic under this title as an organic farm with respect to livestock produced by such farm, producers on such farm----

(1) shall feed organically produced feed that meets the requirements of this title;

In the National Rule:

§ 205.237 Livestock feed.

(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, if applicable, organically handled: *Except*, That, nonsynthetic substances and synthetic substances allowed under §205.603 may be used as feed additives and supplements.

IV. Recommendation

The Livestock Committee does not believe the intent of above regulations was to require that organic young stock, still nursing from their mother's milk, be required to be removed from their mothers, or that the young animal should be removed from organic production for nursing milk from their mother, if the mother has received an allowed synthetic substance that does not remove the mother from organic production.

The Livestock Committee further disagrees with the argument that one portion of the organic livestock community should be held to a different set of rules because of their selection of management practices that are otherwise allowed within organic livestock production.

The Livestock Committee also disagrees that withholding time regulations for an allowed synthetic animal health care product makes the milk non-organic during that withholding period. To say the milk can not be sold for human consumption is not to say that the milk is not organic.

For clarification purposes, the Livestock Committee recommends that language in the last sentence of the Animal Welfare Recommendation section § 205.238(c)(1) read as follows:

§ 205.238(c)(1) Sell, label, or represent as organic any animal or edible product derived from any animal treated with antibiotics, and substance that contains a synthetic not allowed under 205.603, or any substance that contains a nonsynthetic substance prohibited in 205.604. Milk from animals undergoing treatment with prohibited substances cannot be sold as organic or fed to organic livestock.

V. Committee vote

Moved: Dan Giacomini Second: Jeff Moyer
Yes – 5 No -- 1 Absent -- 2 Abstain -- 0

VI. Conclusion

To clarify the language proposed in the November 2009 NOSB Animal Welfare Recommendation, the Livestock Committee recommends that the NOP remove the last sentence of § 205.238(c)(1).

VII. Minority opinion

Organic animals are required to be fed organic feed, and milk from animals treated with substances on § 205.603 Synthetic substances allowed for use in organic livestock production that have a withholding time, does not qualify as organic. The minority opinion believes the Livestock Committee has made a serious mistake with the above recommendation, for the following reasons:

- FDA withholding times do not ensure that the milk contains no residues, just that the residues are below a level the FDA deems safe. The thought behind the NOP requiring double the withholding time in most cases, reflects the belief that the additional time results in no residue levels by the end of the withholding periods, or at least no levels that humans can detect.
- Organic consumers expect a higher standard of humane treatment on organic farms, and do not expect that milk containing chemical residues will be fed to organic animals.
- Even minute amounts of residue can have a negative impact on animals, especially young ones, and impair their ability to lead long, healthy lives.

- Feeding organic animals milk that contains residues may result in those residues ending up in the food supply in the case of slaughter animals (veal, hogs, etc.).
- Milk that cannot be sold for human consumption is not organic. Saying otherwise creates another category of organic milk, a gray area that may lead to problems. For example, the argument could be made that conventional milk, while not able to be sold as organic food, should be allowed to be fed to organic animals because it does not contain any residues. Milk is either organic or it isn't.
- The eight synthetics on 205.603 with a withholding time were all petitioned for use on dairy animals, and would only be administered to a very sick animal, not one out roaming in a pasture. Dairy animals are far more likely to be treated with 205.603 substance because they are generally under more stress than other species, are more likely to be pushed for milk production, and they are more often in some type of confinement.
- Any type of organic livestock farm (dairy, beef, sheep, goat, etc.) would have no incentive to use or develop natural treatments as an alternative to substances on 205.603 if residue laden milk could be fed to organic animals. On the extremely rare occasion that a non-dairy livestock farm needed to treat a lactating animal with a 205.603 substance with a withholding time, in all likelihood the animal would be too sick to produce milk, and her young would be nursed by a surrogate mother or fed by hand with purchased organic milk.
- Economic or management challenges should not be a valid argument to weaken organic standards. Rather than making the use of substances on 205.603 easy, there should be a cost involved with using them, so that organic farms develop different management strategies to eliminate their use.
- The health and development of organic animals would be improved if they were fed organic milk free from residues, and their best long term interests would be served by doing so. If a young animal's mother was treated with a 205.603 substance with a withholding time, the young animal would be better off with a surrogate organic mother, until the withholding time has expired. That may prove difficult with some types of farms, but organic rules shouldn't be enacted to 'make things easy'.
- While different farms have different management practices, writing a rule so that all farms can easily meet a requirement does not serve organic agriculture or organic consumers well. There are many rules that are easier for some farms to meet than others, but that does not mean a farm is being discriminated against because of its type, size, or location. Organic certification is not a right, it is a privilege that must be earned by meeting strict, sustainable, humane, and enforceable standards.
- OFPA and the National Rule require organic animals be fed organic feed. The minority opinion believes that milk that does not qualify to be sold as organic, does not qualify to be fed to organic animals, and doing so goes against OFPA, the Rule, and organic consumer expectations.

Therefore, the minority opinion recommends that rather than removing the last sentence from § 205.238(c)(1) as proposed in the 2009 Animal Welfare Recommendation, the sentence should be amended as follows:

Milk from animals undergoing treatment with a substance allowed under 205.603 that has a withholding time cannot be sold as organic or fed to organic livestock during the withholding time period.