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NATIONAL ORGANIC STANDARDS BOARD

DRAFT POLICY RECOMMENDATION FOR CONSIDERATION BY THE BOARD
AT ITS NEXT MEETING, OCTOBER 12-14, 2004

PROPOSING AN AMENDMENT TO NOP FINAL RULE,
SECTIONS 205.605 AND 205.606,
TO CHANGE THE CLASSIFICATION OF YEAST FROM A “NONAGRICULTURAL
(NONORGANIC) SUBSTANCE” TO AN “AGRICULTURAL PRODUCT”

SUBMITTED BY:
MATERIALS COMMITTEE AND/OR POLICY DEVELOPMENT COMMITTEE

Introduction -- Summary of the Issue

The NOP Final Rule requires processors marketing products labeled as “organic” to use only organically produced ingredients when these are commercially available. 7 CFR §§205.301(b), 205.301(f)(6), 205.270(b)(1). One organic ingredient that has become commercially available in recent years is organically produced yeast. Agrano GmbH & Co. KG, a German company, began manufacturing Bioreal organic yeast in 1997.

This product is distinguished from conventional yeast because organic yeast cultures are grown on substrates of organic raw materials: organic wheat flour or organic potato starch. Two organic certifiers in Europe certify Agrano’s production of organic yeast: Lacon, based in Germany (a certifying agent accredited by the NOP), and BioSuisse, based in Switzerland. In 2003 Agrano sold 1,500 metric tons of Bioreal organic yeast throughout the world. Since December 2000, a U.S. importer, Marroquin International Organic Commodities Services, Inc., in Santa Cruz, California, has offered this product in the United States.

While organic yeast is thus commercially available to processors here in the U.S., processors labeling their products as “organic” have been using less expensive conventional yeast instead of organic yeast. Certifying agents have been permitting this practice. The NOP staff stated in a letter last February that this is consistent with the NOP Final Rule, since under the Final Rule as it is written, “handlers are not required to source organic yeast.”¹ This means organic yeast alone does not receive the same preferred status under the Final Rule as other organic ingredients.

This widespread use of conventional yeast in products labeled “organic” is at cross-purposes with the intent of the NOP Final Rule. It has caused a serious breach of organic integrity in many processed food products. It has hindered the development of a robust market for this key organic

¹ Letter from Richard Mathews, NOP Program Manager, February 11, 2004, to Richard D. Siegel. Mr. Mathews has posted this letter on the NOP website as guidance to certifying agents. www.ams.usda.gov/nop/CertifyingAgents/NOPCorrespondence/ResponseLettertoRsiegel.pdf.

ingredient in the United States. Based on the acceptance of organically produced yeast in Europe, Japan and elsewhere, and the market potential in the U.S., Agrano is considering opening a plant in the U.S. to serve this market, once the Department clarifies the status of organic yeast.

In order to remove the barrier to the use of organic yeast that the NOP staff has cited, and thus place organic yeast on an equal footing with other organically produced ingredients, it will be necessary to correct this anomaly by an amendment to the NOP Final Rule.

Background in Support of Recommendation, Including Historical Context, Regulatory Framework

1. Why the NOP Final Rule Does Not Require Processors to Use Organically Produced Yeast

The reason why the NOP Final Rule does not require processors to use organically produced yeast in products labeled as “organic” is twofold. First, in 1995, when the Board was making its initial recommendations for the National List, and in 1997, when the Department first prepared the National List, organic yeast was not yet known to be commercially available. Because of the need for yeast in organically processed products, the Board, at its meeting in Austin, Texas, on October 31- November 4, 1995, approved five types of nonorganic yeast—autolysate, bakers, brewers, nutritional and smoked—as nonsynthetic substances allowed on the National List. (See Minutes, page 13.) The Department included these five types of yeast in the first National List when it published the first Proposed Rule, on December 16, 1997 (see proposed § 205.26, 62 Fed.Reg. 65944-45).

Second, when the Department placed these types of nonorganic yeast on the National List in 1997, it classified all of them as “nonagricultural (nonorganic) substances.” This classification has carried over from the first Proposed Rule to the second Proposed Rule and finally to the Final Rule, in § 205.605.

This old classification of yeast as a “nonagricultural” substance has become the crux of the problem of introducing organically produced yeast in the United States. Because the Final Rule classifies yeast as “nonagricultural,” this means that technically there is no basis in the Final Rule for recognizing organically produced yeast. Under the Final Rule, if a product is not “agricultural,” it is not eligible to be produced organically.² As the NOP has noted, this would rule out yeast because under § 205.605, yeast is listed as “nonagricultural.” Since conventional yeast is allowed on the National List and organically produced yeast is not formally recognized, this creates the loophole that permits processors to keep using conventional yeast, even though organically produced yeast is commercially available.

In order to have organically produced yeast become a commercially available organic alternative to conventional yeast, all that is necessary is a simple amendment to the Final Rule to reclassify conventional yeast to a “nonorganically produced agricultural product” under § 205.606. Then organic processors would automatically be required to use organic yeast instead of

² See, for example, the Final Rule’s definition of “Organic” at § 205.2.

conventional yeast, because organic yeast is commercially available. The Final Rule, in § 205.606 itself, provides that when organic versions of agricultural products listed under § 205.606 are commercially available, processors may not use nonorganically produced agricultural products as ingredients.

2. Past Instances When the Board Has Supported Reclassification to “Agricultural”

There is direct precedent for the Board and the Department to support a reclassification of a material from “nonagricultural” under § 205.605 to “agricultural” under § 205.606. On June 12, 2000, in its comments on the second Proposed Rule, the Board requested that the Department reclassify seven materials on the National List from “nonagricultural” to “agricultural.” The materials were agar-agar, carrageenan, cornstarch, gums, kelp, lecithin and pectin. (Comments, page 14.) The Department, in the Final Rule, accepted the Board’s comments in the case of five of the seven substances. It moved cornstarch, gums, kelp, lecithin and pectin from the “nonagricultural” category under § 205.605 to the “agricultural” category under § 205.606. (Preamble to Final Rule, 65 Fed.Reg. 80613.) This made it possible for organic versions of these ingredients to be used if they were commercially available.

3. Why Yeast Should Be Reclassified as “Agricultural”

On its merits, yeast deserves to be classified as an “agricultural product.” It is a one-celled microorganism that belongs to the same biological family, fungi, as mushrooms. The essential question is whether the five types of yeast on the National List are synthetic. The Board held a technical review of each of the five types, which would have included an examination of the manufacturing processes used. The Board concluded in each case that the yeast was nonsynthetic. (Minutes of Board Meeting, Austin, Texas, Oct. 31-Nov. 4, 1995, page 13.)

In 1997, when the Department published the first NOP Proposed Rule, it determined that unmodified cornstarch was an “agricultural product.” The Department, in the Preamble to the first Proposed Rule, stated, “Unmodified starches are agricultural ingredients because they are manufactured from agricultural products through methods that do not meet the Act’s definition of synthetic. Their use would therefore be permitted as non-organic agricultural ingredients in proposed § 205.27.” (62 Fed.Reg. 65894, Dec. 16, 1997.)

In classifying cornstarch as “agricultural,” the Department’s reasoning was (1) cornstarch was manufactured from agricultural products, and (2) the methods of manufacturing “do not meet the Act’s definition of synthetic.” The same reasoning supports the reclassification of the five types of yeast as “agricultural” products. Yeast, like cornstarch, comes from agricultural products, and yeast, like cornstarch, was determined by the Board to be nonsynthetic. Therefore, by these standards, the five types of yeast should qualify as “agricultural.”

4. Why This Policy Recommendation Does Not Require a Materials Petition

The Final Rule provides that a petition is required when the Board is to evaluate a substance “for inclusion on or deletion from the National List.” 7 CFR § 205.607(a). This policy recommendation

does not trigger the need for a materials petition, since it does not seek either to include a new material in the National List or delete an existing a material from the List. Nor would it revise any existing annotation. The proposed amendment would simply reclassify a group of substances already on the National List from “nonagricultural” under § 205.605 to “agricultural” under § 205.606.

As noted above, the Board made a similar policy recommendation to the Department in June 2000, as part of the Board’s comments on the second Proposed Rule. When the Board requested at that time that agar-agar, carrageenan, cornstarch, gums, kelp, lecithin and pectin be reclassified from “nonagricultural” to “agricultural,” it did not require any new materials petition. Therefore, the Board can consider and adopt this policy recommendation without the need for a materials petition.

5. Why This Recommendation is Compatible with the Recommendation
Of the Commercial Availability (606) Task Force Recently Adopted by the Board

At its meeting in Chicago on April 29, 2004, the Board adopted a set of policy recommendations to the NOP that were prepared by the Commercial Availability (606) Task Force. Recommendation #1a calls for an amendment of §205.606 so that the only materials listed under it would be nonorganically produced agricultural substances that would have some prohibition or restriction on their use in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)).” Recommendation #1b calls for the Board to review all five of the current materials listed under §205.606 as agricultural, as well as two other materials the Board has recommended for inclusion under §205.606 as agricultural. Agricultural materials with prohibitions and restrictions would remain covered under the new §205.606. Any agricultural materials that did not have prohibitions or restrictions and would be allowed unless organic versions were commercially available would then be “removed from the National List.”

The recommendation presented in this document would not affect the measures in the proposal of the Commercial Availability (606) Task Force. When the five types of yeast currently listed under § 205.605 would be added to the “agricultural” category under §205.606, then they would be subject to the same process that would apply to the substances already listed or proposed to be listed under §205.606.

Recommendation

The Board should recommend to the NOP that the following materials listed as nonsynthetics allowed under § 205.605, Nonagricultural (nonorganic) substances..., be deleted from that section and added to § 205.606, Nonorganically produced agricultural products....

“Yeast – nonsynthetic, growth on petrochemical substrate and sulfite waste liquor is prohibited (Autolysate; Bakers; Brewers; Nutritional; and Smoked – nonsynthetic smoke flavoring process must be documented).”

In addition, in order to complete the reclassification of yeast from “nonagricultural” to “agricultural,” the Board should recommend to the NOP that the existing definition of “nonagricultural substance” in § 205.2 should be amended to exclude yeast from its coverage.

Committee Vote

Minority Opinion Summarized, if applicable