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National Organic Standards Board
Policy Development Committee
Room 4008 – South Building
United States Department of Agriculture
Washington, DC 20250-0001

Re: Commercial Availability (606) Task Force
Recommendation for Rule Change on Commercial Availability,
Draft 2
Comment on Proposed New Wording of Section 205.606

To the Chair and Members of the Policy Development Committee:

This comment relates to the new wording of Section 205.606 that the Commercial Availability (606) Task Force has proposed. Specifically, I am writing to recommend that the words “as ingredients” be retained in the title and similar language appear in the text of Section 205.606.

Title 7 CFR, Section 205.606, currently bears the title, “ **Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as ‘organic’ or ‘made with organic (specified ingredients or food group(s)).**” Similarly, the first sentence of Section 205.606 reads, “The following nonorganically produced agricultural products may be used as ingredients in or on processed products....”

In the proposed new wording for the title of Section 205.606, the words “as ingredients” are omitted where they would otherwise appear. The proposed new title would be “**Nonorganically produced agricultural products allowed in or on processed products...**” The text, reduced to a single paragraph, would read, “A nonorganically produced agricultural product may be used in or on processed products....” Here, too, there is no reference to a product used “as an ingredient.”

I recommend that the words “as ingredients” be restored in the proposed title and the words “as an ingredient” be placed in the proposed text of Section 205.606, for the following reasons:

1. Section 205.605 is the companion section to Section 205.606. These sections are the two that apply to ingredients on the National List in processed products. Sections 205.605 and 205.606 both currently use the words “as ingredients.” If Section 205.605 continues to have the words “as ingredients” and Section 205.606 no longer does, this will create an inconsistency between these two closely connected sections of the National List.
2. Since May 2002, when the Task Force first presented its proposal to change Section 205.606, omitting the words “as ingredients,” there has been a significant development concerning what constitutes an “ingredient” in a processed food product. On December 12, 2002, the National Organic Program (NOP) issued a policy statement, “Synthetic Substances Subject to Review and Recommendation by the National Organic Standards Board When Such Substances are Used as Ingredients in Processed Food Products.” The NOSB and the NOP are continuing to discuss this policy statement. Until this policy matter over the meaning of the term “ingredient” is finally settled, it would be premature to rewrite either Section 205.605 or 205.606 so as to drop the word “ingredient.”
3. If the reasons given in Items 1 and 2 have merit, then Section 205.606 can certainly accommodate the references to “ingredients.” Removing the words “as ingredients” from Section 205.606 appears to be no more than a cosmetic change. The Task Force did not present any particular rationale in May 2002, nor has it done so this time, for deleting the words “as ingredients.” It was not essential that the Task Force drop these words in order to bring about the change in Section 205.606 that it desired. The Task Force explains that the purpose of revising Section 205.606 is to discontinue the list of agricultural products currently found in Section 205.606, because the NOSB noted in May 2002 that the industry “was starting to rely on section 205.606 as a list of agricultural ingredients that are not available in an organic form.” Thus, in describing its rationale, the Task Force even uses the word “ingredients” to identify its concern. This confirms that removing the words “as ingredients” is not essential in the new version of Section 205.606. and that these words can be restored.

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For the reasons stated above, it is my recommendation that the title of the revised Section 205.606 read: “**Nonorganically produced agricultural products allowed as ingredients in or on processed products...**” and the text read: “A nonorganically produced agricultural product may be used as an ingredient in or on processed products....”

Sincerely yours,

Richard D. Siegel