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

Date: <u>4/21/2007</u>
Subject: <u>Lemongrass - frozen</u> for addition to National List under, §205.606
Chair: Andrea Caroe
Recommendation
The NOSB hereby recommends to the NOP the following: Rulemaking Action: Guidance Statement: Other:
Statement of the Recommendation (including Recount of Vote): The Board recommends adding Lemongrass - frozen under §205.606-nonorganically produced agricultural products
NOSB Vote: Motion: Julie Weisman Second: Steve DeMuri
Board vote: Yes -11 No-0 Abstain- 0 Absent -4 Recuse- 0
Rationale Supporting Recommendation (including consistency with OFPA and NOP):
The National List of Allowed and Prohibited Substances §205.606
Response by the NOP:

National Organic Standards Board

Final Recommendation for

Date: April 21, 2007

I. List: (where in FR rule example 205.606)

National Organic Program Subpart G: The National List of Allowed and Prohibited Substances. §205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food groups(s))."

II. Committee Summary:

On June 9, 2005 a court final order and judgment arising from <u>Harvey v. Johanns</u>, stated that "the Secretary must issue a declaratory judgment that 7 CFR § 205.606 shall not be interpreted to create a blanket exemption to the National List requirements specified in 7. U.S.C. 6517." These "requirements permit the use of nonorganic agricultural products in or on processed organic products when their organic form is not commercially available."

Further, "consistent with OFPA, 7 CFR §205.606 shall be interpreted to permit the use of a nonorganically produced agricultural product that has been listed in § 205.606 pursuant to National List procedures and when a certifying agent has determined that the organic form of the agricultural product is not commercially available."

Effort was made through many channels to elicit from manufacturers, petitions for any nonorganically produced agricultural materials that had been using on products labeled and sold as "organic."

In addition, pursuant to the judgment in <u>Harvey v.Johanns</u>, the NOSB was instructed to develop criteria for determining commercial availability, an essential tool in evaluating whether or not petitioned materials could be listed on § 205.606. These criteria were finalized in the NOSB "Recommendation for the Establishment of Commercial Availability Criteria National List § 205.606" of October 19, 2006. That recommendation allows for pro-active listing on 205.606 of materials which may currently be available in an organic form, but the supply of which has a history of fragility due to factors such as limited growing regions, weather or trade-related issues.

Furthermore, the recommendation reiterates the role of the Accredited Certifying Agent (ACA) in making the ultimate decision as to whether a 606-listed material may be used, on case by case basis.

Petitions received for spice materials contained widely varying amounts information with which to assess the current availability or fragility of current supply of organic forms of the petitioned spice material.

The petitioner for Lemongrass, frozen described the supply of fresh organic lemongrass as inconsistent, depending on the season and also made the case that only fresh and frozen forms of this material were able to deliver adequate and authentic flavor to Asian-style organic processed products. Public comments were received that supported this claim.

The Handling Committee noted that agricultural substances are only required to be evaluated using the criteria specified in the Act (7 U.S.C. 6517 and 6518).

6517(c)(1)(a)

- i) would not be harmful to human health or the environment;
- (ii) is necessary to the production or handling of the agricultural product because of unavailability of wholly natural substitute products; and
- (iii) is consistent with organic farming and handling;

Agricultural substances do not need to be evaluated against section 205.600 (b). (i.e. essentialness). This additional criteria is only required for any synthetic substance used as a processing aid or adjuvant.

The Handling Committee also considered what constitutes "essential" for organic handling of a finished retail product and how that may be different from that of a material used in crop or livestock production. It was agreed that certain spice materials might be essential for creating a product that meets consumer expectations of taste or texture that is authentic to a specific ethnic cuisine. The petitioner cited lemongrass, frozen as an essential ingredient in the organic consumer products they make for this reason.

The Handling Committee carefully considered the difference between the availability of a raw agricultural product as organic, and the availability of certified organic handlers to process that raw material into one useable year-round for highly specific flavoring purposes. The petitioner for lemongrass, frozen acknowledged that this product is cultivated organically, but that currently no processor with the equipment or technology to process lemongrass into a quick frozen form which can be used throughout the year, has an organic certification and/or is unwilling to use their equipment for a batch of as small as size as would be needed to fulfill current organic requirements.

III. Board Recommendation

Lemongrass - frozen for inclusion on §205.606 of the National List

Moved: Julie Weisman Second: Steve DeMuri

Board vote: Yes-11 No-0 Absent-4 Abstain-0 Recuse-0