

Formal Recommendation
From: National Organic Standards Board (NOSB)
To: National Organic Program (NOP)

Date: October 22, 2021

Subject: Sodium Nitrate

NOSB Chair: Steve Ela

The NOSB hereby recommends to the NOP the following:

Rulemaking Action: X

Statement of the Recommendation:

The NOSB voted to reinstate the listing for sodium nitrate at §205.602(g) – as a prohibited nonsynthetic, so it can undergo sunset review every five years as per the Organic Foods Production Act (OFPA).

Rationale Supporting Recommendation:

The NOSB voted unanimously to reinstate the sodium nitrate listing thereby removing any confusion as to why the listing has remained on the National List despite not being reviewed in the sunset process. Relisting sodium nitrate will add it back into the sunset review process, something that stakeholders have requested for a number of years.

Commenters noted that the prior NOSB recommendation to completely prohibit sodium nitrate should proceed through rulemaking rather than reinstating the listing with annotation.

However, other commenters noted that at this time there is no restriction on the amount of sodium nitrate that can be used. While some certifiers are still enforcing the 20% restriction, others have ceased to evaluate the amount used. Relisting sodium nitrate with the restrictive annotation of 20% will create uniformity between certifiers.

NOSB Vote:

Listing Motion:

Motion to reinstate the listing of sodium nitrate at 7 CFR 205.602(g) - prohibited nonsynthetic: Sodium nitrate - unless use is restricted to no more than 20 percent of the crop's total nitrogen requirement; use in spirulina production is unrestricted until October 21, 2005.

Motion by: Steve Ela

Seconded by: Brian Caldwell

Yes: 14 No: 0 Abstain: 0 Absent: 0 Recuse: 0

Motion Passed

See recommendation below

**National Organic Standards Board
Crops Subcommittee Proposal
National List Technical Correction for Sodium Nitrate
July 27, 2021**

Background:

The NOSB seeks to make a technical correction to the listing for sodium nitrate. While sodium nitrate still appears on the National List of Allowed and Prohibited Substances (National List) with an annotation limiting its use (7 CFR 205.602(g) – prohibited nonsynthetic), the sunset review of sodium nitrate has been suspended. The current listing reads:

Sodium nitrate – unless use is restricted to no more than 20 percent of the crop’s total nitrogen requirement; use in spirulina production is unrestricted until October 21, 2005.

According to the sunset provision in OFPA, sodium nitrate was supposed to sunset from the National List on October 21, 2012. At that time, the sunset process required the NOSB to vote to relist a substance for it to remain on the National List. If the NOSB voted to not renew a substance, it would be referred to the NOP for rulemaking to remove it from the List. The current process differs in that the NOSB must vote to remove a substance from the list, otherwise the substance remains on the List.

As part of the 2012 sunset review, the NOSB reviewed sodium nitrate at its April 2011, meeting and recommended that it be relisted, but without the annotation limiting its use. In other words, the NOSB voted to keep sodium nitrate on the National List with a complete prohibition on its use. During the rulemaking process, the NOP received comments about the economic significance of complete prohibition, which delayed rulemaking. While that rulemaking was supposed to be forthcoming, it was never developed nor passed.

Currently the listing for sodium nitrate is in limbo. It was never renewed on the National List as a prohibited substance with or without the annotation limiting its use. While the wording remains on the National List, the listing is considered invalid. Therefore, sodium nitrate use is not restricted to 20% of a crop’s total N needs since the listing was not renewed during the 2012 sunset process. It can also be argued that at this time sodium nitrate should not even appear on the National List since it was never officially renewed.

Subcommittee Review:

In order to remedy and clarify this technical issue, stakeholders have asked the NOSB to formally reinstate the listing for sodium nitrate. This proposal is not intended to be a review about whether sodium nitrate should be listed with a 20% cap or be completely prohibited. While this Board notes that the previous NOSB voted for a complete prohibition, in order to ensure that sodium nitrate isn’t allowed for unlimited use, this Board recommends a formal motion to recognize the current listing and have it reviewed every five years as part of the sunset cycle. A future Board, or petitioner, can submit a petition for a complete prohibition and that can be debated separately from the resolution of the technical issue that is at currently at hand.

Subcommittee Vote:

Motion to reinstate the listing of sodium nitrate at 7 CFR 205.602(g) - prohibited nonsynthetic: Sodium nitrate - unless use is restricted to no more than 20 percent of the crop's total nitrogen requirement; use in spirulina production is unrestricted until October 21, 2005.

Motion by: Steve Ela

Seconded by: Brian Caldwell

Yes: 8 No: 0 Abstain: 0 Absent: 0 Recuse: 0

Approved by Rick Greenwood, Crop Subcommittee Chair, to transmit to NOP July 27, 2021.