

National Organic Standards Board
Crops Subcommittee Petitioned Material Discussion
Whey Protein Concentrate
August 10, 2020

Summary of Petition ([Original petition 9/30/19](#); [petition addendum #1 12/2/19](#); [petition addendum #2 3/21/20](#)):

A petition to remove whey protein concentrate from the National List was received by the NOSB on September 30, 2019. This petition was received at the same time the NOSB is conducting the sunset review for whey protein concentrate. The reasons for removal in the petition are similar to the reasons cited by the handling subcommittee in its recommendation to remove this material through the sunset process. There is adequate organic supply of both form and quantity. Given the commercial availability of organic whey protein concentrate, this material no longer appears to meet the criteria for inclusion on the National List as defined in the Organic Foods Production Act, (7 U.S.C 6518(m)(6)).

Summary of Review:

In response to questions to stakeholders requesting if there are any forms not available organically, no public comment received indicated that the organic supply is inadequate. In fact, comments detailed the organic supply, both in quantity and form, exceeds the organic demand. As noted above, the Handling Subcommittee has recommended whey protein concentrate be removed from the National List. For a complete description of the review of whey protein concentrate, please refer to the Handling Subcommittee's fall 2020, sunset review for this material.

The Handling Subcommittee has decided to defer action on this petition until the actions on the sunset review are final. If the NOSB votes to delist whey protein concentrate as part of the sunset process and rulemaking for delisting becomes final, the need for this petition is moot and the petition could be withdrawn. However, if in light of new public comment that a specific form or forms of whey protein concentrate are not available and the sunset vote or rulemaking does not result in delisting of this material, the NOSB could resume work on this petition. The petition process could allow for annotation whereby the NOSB could determine that whey protein concentrate be delisted except for a specific form or forms that the NOSB might determine are not available organically.

Public comments received during the Spring 2020 NOSB were overwhelmingly in support of removing whey protein concentrate from the National List. The Handling Subcommittee specifically requested information as to whether there are any forms of whey protein concentrate that are not available organically. In response to this explicit request, no public comments indicated that there are organic forms that are not available. Furthermore, several commenters replied that they had an adequate supply of all forms and actually had so much supply that they were having to sell some organic product on the conventional market. These comments included:

CROPP Cooperative: Organic Whey Protein is fully available in form and volume. The processing infrastructure has grown dramatically since whey protein concentrate was placed on the National List. Processors are established throughout the United States for both finished products and condensed whey.

Roughly sixty percent of our whey is processed into whey powders, with future plans to utilize our entire whey stream. Our whey supply could produce 1.4 million pounds of WPC annually.

Today there is an ample supply of organic whey protein concentrate on the market and the supply will continue to grow. In fact, our WPC supply is greater than market demand, where large volumes of our supply are sold on the conventional market.

Western Organic Dairy Producers: We have more than adequate product available to meet the current demand for Organic Whey Protein Concentrate. Given this availability, there is no need to utilize a conventional product for products labeled as organic. The removal of the conventional Whey Protein Concentrate further supports organic dairy producers and organic dairy product utilization.

Milk Specialties Global: As outlined in the petition, the decision to allow nonorganic whey in organic products may have been necessary in 2007, but no longer meets the threshold of necessity today. We urge the NOSB to remove Whey Protein Concentrate from the National List as part of the mandated sunset process.

Furthermore, at least one organic certifier noted that all of their handlers are currently using organic forms of whey protein concentrate and a number of suppliers were identified on the Organic Integrity Database. Another commenter also noted that organic whey-based products are also offered from international partners, making the supply chain quite robust.

Questions:

1. The NOSB received a number of public comments at the Spring, 2020 public meeting that there is an adequate supply of organic whey protein concentrate to meet all the market demands for this material. To best inform its final sunset review decision at its Fall 2020 meeting, the Board is interested in hearing feedback on the following questions. Are there any specific forms of organic whey protein concentrate that are not available in organic form or quantity?
2. Are there any reasons that there is not an adequate organic supply of whey protein concentrate to meet the market demand?

Subcommittee Vote:

Motion to accept the discussion document on whey protein concentrate

Motion by: Steve Ela

Seconded by: Scott Rice

Yes: 7 No: 0 Abstain: 0 Absent: 0 Recuse: 0

Approved by Asa Bradman, Handling Subcommittee Chair, to transmit to NOP August 13, 2020