

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

Date: November 30, 2007

Subject: **Grape Seed Extract** for addition to National List under, §205.606

Chair: Andrea Caroe

Recommendation

The NOSB hereby recommends to the NOP the following:

Rulemaking Action: XXX
Guidance Statement: _____
Other: _____

Statement of the Recommendation (including Recount of Vote):

Grape Seed Extract fails for inclusion on §205.606-nonorganically produced agricultural products

Motion: Julie Weisman

Second: Steve DeMuri

Board vote: Yes -7 No-8 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:

Final Recommendation for Grape Seed Extract

December 21, 2007

I. List:

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 *Harvey v. Johanns*, 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 non-organically 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 non-organically produced agricultural materials that they had been using on products labeled and sold as “organic.”

In addition, pursuant to the judgement in *Harvey v. Johanns*, 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 CAC in making the ultimate decision as to whether a 606-listed material may be used, on a case by case basis.

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

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 agricultural materials might be essential for creating a product that meets consumer expectations of taste or texture that is authentic to a specific ethnic cuisine, or in contributing nutritional value.

The petitioner for Grape Seed Extract made the case that Grape Seed Extract is a source of Oligomeric Proanthocyanidins (OPC's) and other nutrients and cited research demonstrating the value of OPC's in human nutrition, especially in promoting heart health. Therefore, the petitioner states Grape Seed Extract is considered to be an essential ingredient in many organic consumer products. There were no public comments specifically opposing the listing of Grape Seed Extract on § 205.606.

The Board considered the both the availability of a raw agricultural product as organic, and the availability of certified organic handlers to process that raw material into one useable for use in a finished consumer product, both of which are factors in the case of Grape Seed Extract.

The petitioner for Grape Seed Extract stated that the ratio of finished grape seed extract to raw grape seeds is 1: 100. The quantity required is so vast that even though organic grapes are widely cultivated in the U.S., the amount of by-product, in the form of organic grape seeds is not sufficient to meet demand. In addition, the petitioner reports the existence of only two processors with the capability of transforming the raw grape seeds into extract and that neither is a certified organic handler.

During the Board's discussion several members of the Board called into question the petitioner's assertion that there is not enough organic grape seed to meet the demand. In addition, the fact that the petitioner is one of the processors possessing ability to produce the grape seed extract, but lacking an organic certification.

III. Board Recommendation

Grape Seed Extract fails for inclusion on §205.606 of the National List

Moved: Julie Weisman

Second: Steve DeMuri

Board vote: Yes-7 No-8 Absent- 0 Abstain-0