

**Formal Recommendation by the
National Organic Standards Board (NOSB)
to the National Organic Program (NOP)**

Date: December 2, 2011

Subject: Tartaric Acid: §205.605(a) and §205.605(b) Sunset 2013

Chair: Tracy Miedema

The NOSB hereby recommends to the NOP the following:

Rulemaking Action X

Statement of the Recommendation (Including Recount of Vote):

The NOSB recommended by a vote of 14 yes, zero no and zero absent to relist Tartaric Acid, made from grape wine on the National List section §205.605(a)

The NOSB recommended by a vote of zero yes, 14 no and zero absent not to relist Tartaric Acid, made from malic acid not on the National List section §205.605(b)

Rationale Supporting Recommendation (including consistency with OFPA and NOP):

The National List listings for Tartaric Acid, on both §205.605(a) and §205.605(b), were reviewed by the NOSB at the November 2011 meeting. A summary of the Handling committee's recommendation is attached. The committee recommended that Tartaric Acid, made from grape wine be relisted on §205.605(a) Non-Synthetics Allowed and that Tartaric Acid, made from malic acid be allowed to sunset (not be relisted) from §205.605(b) Synthetics Allowed.

Three public comments were received in response to the committee recommendation. Two supported relisting tartaric acid on §205.605(a) and one supported relisting tartaric acid on both §205.605(a) and §205.605(b). The public comment that supported relisting on both sections did so specifically because they did not support removing a listing without a Technical Review and stated that if a TR was not available the sunset listing for §205.605(b) should be deferred.

Between posting of the committee recommendation and the November 2011 NOSB meeting, a Technical Review (TR) for Tartaric Acid was received and accepted by the Handling Committee. The TR supported the technical

information available to the committee at the time of their recommendation. Specifically, that the synthetic form of tartaric acid is made from maleic acid not malic acid, that the two sources of tartaric acid do not lead to tartaric acid that has different functionality when used and that the majority of tartaric acid available is “isolated from the undesirable wastes created during the winemaking process.” Additionally, the TR provided information that in the Canadian Organic Regulation tartaric acid is allowed with the synthetic form only allowed when the non-synthetic form is not available. The EU organic rule only allows tartaric acid if from a natural plant source.

During NOSB discussion on the committee recommendation, the question was asked whether sulfites would be in the tartaric acid made from grape wine. The original board that listed tartaric acid, made from grape wine, did not place any restrictions on the use of sulfites. Whether tartaric acid, made from grape wine, could be available as organic was also discussed. That point was outside the scope of the sunset review. Certainly the board would welcome information saying that it was available. None has been received to this point.

Based on public comment received, the Technical Review and review of NOSB records on tartaric acid, the NOSB voted to relist the tartaric acid, made from grape wine, on §205.605(a) Non-Synthetics Allowed and to sunset (not relist) tartaric acid, made from malic acid, on §205.605(b) Synthetics Allowed.

NOSB Vote:

Motion to relist Tartaric Acid, made from grape wine on the National List section §205.605(a)

Moved: Steve DeMuri		Second: Tina Ellor		
Yes: 14	No: 0	Abstain: 0	Absent: 0	Recusal: 0

Motion to relist Tartaric Acid, made from malic acid on the National List section §205.605(b)

Moved: Steve DeMuri		Second: Colehour Bondera		
Yes: 0	No: 14	Abstain: 0	Absent: 0	Recusal: 0

**National Organic Standards Board
Handling Committee
Sunset 2013 Proposed Recommendation
Tartaric acid on §205.605(a) and §205.605(b)**

December 2, 2011

List:

National Organic Program Subpart G: The National List of Allowed and Prohibited Substances. §205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)).”

(a) Nonsynthetics allowed AND

(b) Synthetics allowed

Committee Summary:

Tartaric acid is currently included on the National List §205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)).” This material is listed both as a Nonsynthetic allowed with an annotation of “made from grape wine” (§205.605 (a)) and a Synthetic allowed with an annotation of “made from malic acid” (§205.605 (b)).

Tartaric acid was added in both locations through a Federal Register notice on October 31, 2003 (61988 Federal Register, Volume 68, No. 211, #61988) resulting from a October 31, 1995 NOSB recommendation. Transcripts from that meeting are included below:

“Tartaric Acid (Made from grape wine)

Determined to be non-synthetic; Vote – Unanimous (1 absent).

The NOSB’s decision is to allow this material for use in organic food processing;

Vote – Unanimous (1 absent).

“Tartaric Acid (Made from malic acid)

Determined to be synthetic; Vote – Unanimous (1 absent).

The NOSB’s decision is to allow this material for use in organic food processing;

Vote: 10 aye / 4 opposed.

Both listings of tartaric acid were recommended by the NOSB for relisting as part of the sunset process at the May 2008 meeting. The non-synthetic listing, “made from grape wine,” was recommended for relisting by a vote of 13 yes, 1 abstention and 1 absent. The synthetic listing, “made from malic acid,” was recommended for relisting by a vote of 10 yes, 3 no, 1 abstention and 1 absent. At the meeting public comment was received saying that the two sources of tartaric acid result in materials

with different properties that are used in different applications but that the predominant form of tartaric acid on the market is made from grape(s) or grape wine. No public comment was received at that meeting indicating that tartaric acid made from malic acid and listed on §205.605(b) was no longer necessary. The board recommendation from the May 2008 meeting said, "A petition to remove tartaric acid made from malic acid from 205.605 b) would allow for the fuller reconsideration of the listing of material as well at a future date."

The listings of tartaric acid on both sections of §205.605 are due for a sunset review by 2013 (Federal Register Vol. 76, No. 105: AMS–NOP–11–0003). In response to this Federal Register notice, six public comments have been received with all supporting the relisting of tartaric acid. Specifically to the §205.605a non-synthetic listing, four public comments supported the relisting and one supported relisting or moving to §205.606 if there was sufficient evidence to demonstrate that it could be produced organically in appropriate form, quality and quantity. For the §205.605b synthetic listing, four public comments supported the relisting. One public comment supported relisting tartaric acid but did not indicate whether that support was for one or both listings.

In early September 2011 the NOSB received a petition for removal of tartaric acid from §205.605b. The petition indicates that there are no functional differences between the tartaric acid sourced from grape wine or from malic acid and that there is sufficient tartaric acid sourced from grape wine. Additionally, the petition goes on to say that tartaric acid is not sourced from malic acid but rather maleic anhydride. A Technical Review has been requested from the National Organic Program. It is expected to be completed by the end of October to allow for public comment. Should it not be received, the Handling Committee intends to defer a vote on this material until the spring 2012 meeting.

At this time however, we believe that there is insufficient evidence to support the need for both listings of tartaric acid. In two sunset reviews, we have received little public comment providing technical reasons why a synthetic source and form is needed when the non-synthetic source/form is the predominant version available.

Committee Recommendations

The Handling Committee recommends renewal of Tartaric Acid, made from grape wine on the National List section §205.605(a)

Moved: Heinze Second: Demuri

Committee Vote: Yes -- 6 No -- 0 Absent -- 1 Abstain -- 0 Recuse -- 0

The Handling Committee recommends renewal of Tartaric Acid, made from malic acid on the National List section §205.605(b)

Moved: Heinze Second: Demuri

*Committee Vote: Yes -- 1 No -- 5 Absent -- 0 Abstain -- 0
Recuse -- 0*