

Clarification of 205.606

Draft 5 – By: Kim Burton- Chair, NOSB Materials Committee

Section 205.606 of the NOP is causing confusion among the organic industry and NOSB board members during the material review process. This recommendation is offered to clarify the intent of 205.606 and propose a solution.

Summary-

As it currently stands, Section 205.606 serves as a list of **nonorganically produced agricultural products that may be used when the product is not commercially available in organic form**. When OFPA was written, the Act never intended to require a list of nonorganically produced agricultural products let alone a list of non-commercially available materials. The only two categories required for the National List were **synthetic substance permitted and natural (non-synthetic) substance prohibited**. The format for the Crops and Livestock followed this outline. Somewhere Handling went astray. Additionally, OFPA clearly allows for an exemption of materials used in handling that are non-synthetic but on organically produced. Below is the exact OFPA language:

OFPA:

National List - Section 2118(b) Content of List: The list established under subsection (a) shall contain an itemization, by specific use or application, of each **synthetic substance permitted** under subsection (c)(1) or each **natural substance prohibited** under subsection (c)(2).

National List - Section 2118(c) Guidelines for Prohibitions or Exemptions.

(1)Exemption for prohibited substances. The National List may provide for the use of substances in organic farming or handling operation that are otherwise prohibited under this title only if (A)The Secretary determines, in consultation with the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, that the use of such substances **(iii) is used in handling and is non-synthetic but is not organically produced**.

What's the confusion?

The organic handling industry is starting to rely on section 205.606 as a list of **noncommercially available nonorganic agricultural materials**. Specifically, the NOP has already had one petition requesting the removal of a material under 205.606 (because it may be commercially available) and several petitions requesting an addition to 205.606. Unless this is fixed we are going to create an ongoing problem of material review for the NOSB not to mention a waste of money reserves from our TAP review contracts. In addition, once a material is placed on the list as being not commercially available in an organic form, the industry no longer has an incentive to develop organic sources of the material.

Recommendation

The NOSB Materials and Processing Committees recommend that there be a rewording of 205.606 as described below.

Section 205.606 Nonorganically produced agricultural products allowed in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s))."

Any nonorganically produced agricultural products may be used in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s))" only in accordance with any restrictions specified in this section and when the product is not commercially available in organic form.

Gums- water extracted only (arabic, guar, locust bean, carob bean)Kelp-for use as a thickener and dietary supplement.

The materials (a) cornstarch (native), (d) Lecithin – unbleached, and (e) Pectin (high methoxy) that are currently under 205.606 should be deleted off the National List. The materials (b) Gums – water extracted only (arabic, guar, locust bean, carob bean) and (c) Kelp – for use as a thickener and dietary supplement that are currently under 205.606 should be moved to 205.605(a). A guidance document for materials identified under the "non-organic agricultural" category should be developed out of the scope of the National List. A guidance document on "commercial availability" still needs to be completed and posted.

Conclusion: Clarification of 205.606 will follow the OFPA intent to allow for the exemption of nonorganically produced agricultural products on the National List unless the material is reviewed and determined to fall under 205.605.