

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

**Date:** 4/21/2007

**Subject: Fructooligosaccharide** 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):**

The Board recommends adding Fructooligosaccharide under §205.606-nonorganically produced agricultural products

**NOSB Vote: Motion: Julie Weisman Second: Steve DeMuri**

**Board vote:** Yes -10 No-3 Abstain- 0 Absent -2 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:**

# National Organic Standards Board

## Final Recommendation for

**Date: April 21, 2007**

**I. List:** (where in FR rule example 205.606)

**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 nonorganically 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 had been using on products labeled and sold as “organic.”

In addition, pursuant to the judgment 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 Accredited Certifying Agent (ACA) 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-organic 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 petitioner for Fructooligosaccharide made the case that there is currently no organic form of this product being produced.

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 or nutritional value. A number of commenters cited Fructooligosaccharide as an essential ingredient in the organic consumer products they make for this reason. There were no public comments specifically opposing the listing of Fructooligosaccharide on § 205.606.

The Handling Committee carefully considered the difference between 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 handling purposes. The petitioner for Fructooligosaccharide acknowledged that while it is like in the future for the manufacturer to make this material available in an organic form, this is not likely to happen in the next three years.

### **III. Board Recommendation**

Fructooligosaccharide for inclusion on §205.606 of the National List

*Moved: Julie Weisman      Second: Steve DeMuri*

*Board vote:    Yes-10      No- 3      Absent- 2      Abstain-0      Recuse-0*