

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

**Date:** 5/9/2007

**Subject:** Fish Oil, stabilized using only allowed ingredients on the National List  
for addition to National List §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 Fish Oil, stabilized using only allowed ingredients on the National List to the National List under §205.606 nonorganically produced agricultural products

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

*Board vote: Yes - 12   No - 0   Abstain - 1   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: May 9, 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 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 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 Fish Oil made the case that the National Organic Program does not currently have production standards for aquaculture. The National Organic Standards Board approved recommended aquaculture standards at the March 2007 meeting, where this Fish Oil petition was also considered. Since aquaculture standards do not currently exist, organic fish cannot be commercially available as an input to process into fish oil.

During discussion of this petition, the question of allowed stabilizers was raised. In the past, fish meal allowed in organic products contained ethoxyquin which is not compatible with organic handling. The petitioner uses tocopherols to stabilize their product. After discussion, the Board decided to add an annotation to the recommendation to list Fish Oil to the National List. The annotation is “stabilized using only allowed ingredients on the National List.” The Board felt that this annotation was not overly prescriptive since a nonorganic material that falls within the annotation exists on the market.

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. The petitioner cited Fish Oil, which contributes desirable nutrients, most notably Omega-3-Fatty acids, as an ingredient desired by consumers in the organic products they purchase. There were no public comments specifically opposing the listing of Fish Oil 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. The petitioner for Fish Oil, stabilized using only allowed ingredients on the National List, acknowledged that fish for inputs to process into fish oil cannot be cultivated organically due to the lack of organic production standards for fish.

**(iv) Board Recommendation**

The Handling Committee recommends the listing of the following substance in this use Category:

**Fish Oil, stabilized using only allowed ingredients on the National List**

*Moved: Julie Weisman      Second: Steve DeMuri*

*Board vote: Yes – 12    No – 0    Abstain – 1    Absent – 2    Recuse - 0*