

October 23, 2007

Using Colorants in U.S. Organic Foods

The Organic Foods Production Act (OFPA) of 1990 dictates the establishment of a National List of substances that are allowed or prohibited for use in organic foods. Every 5 years the National Organic Standards Board (NOSB) is required to review the exemptions and prohibitions identified on the National List. The process of reviewing the National List by the NOSB is called the "Sunset Review" process. ColorMaker and D.D. Williamson proactively petitioned the NOSB to add fifteen (15) natural colorants to section 205.606 of the National List in response to (1) anticipation of the sunset of colors from section 205.605, (2) the ambiguity of the category "colors-nonsynthetic sources only" when listed in 205.605, and (3) the OFPA revision affecting section 205.606 in response to the "Harvey" judgement.

Among the sections of the National List are (1) section 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))'" and (2) section 205.606 "nonorganically produced **agricultural** products allowed as ingredients in or on products labeled as 'organic' or 'made with organic (specified ingredients or food group(s))'". During a recent Sunset Review process, it came to the attention of the NOSB that the original placement of colorants to the National List was done without formal recommendation by the NOSB. This placement of colorants to section 205.605 was inappropriate as this section of the National List is reserved for "nonagricultural" substances and nonsynthetic colorants are agricultural derivatives. In addition, the category of "colors-nonsynthetic sources only" was found to be too vague and left potential for confusion in determining and verifying what colorants are truly nonsynthetic. Therefore, the NOSB proposed for the category "colors-nonsynthetic sources only" to be removed from section 205.605 of the National List with the expectation that natural colorants would instead be individually listed in 205.606. The USDA officially sunsetted the listing of nonsynthetic colorants from 205.605 on October 17, 2007¹.

On June 9, 2005 a Court Order (Harvey v. Johanns)² required amendments be made to the OFPA and among the arguments in this legal case was the ambiguity of 205.606. Many producers, handlers, and certifiers were suspected of misinterpreting 205.606 to imply that any non-organic agricultural product not commercially available in organic form could be used in organic products without being specifically identified on the National List. In accordance with the final judgment in "Harvey", the OFPA revision emphasizes that only the nonorganically produced agricultural ingredients specifically listed in 205.606 can be used in Organic Foods in accordance with any specified restrictions and when the product is not commercially available in organic form.

ColorMaker and D.D. Williamson successfully petitioned the NOSB for the placement of specific sources for natural colorants onto section 205.606 of the National List of ingredients approved for use in foods labeled "organic" or "made with organic ingredients"³. The decision of the NOSB was based on its careful consideration of fifteen (15) separate petitions filed by ColorMaker and D.D. Williamson, as well as other petitions filed by both buyers (organic food processors) and sellers (ingredient suppliers) of natural colorants. Out of the twenty-five natural colorants permitted for use in foods by the FDA, nineteen may be considered NOP compliant: 1) Annatto Extract - divided into two separate listings; one for oil extracted and one for water extracted; 2) Beet Juice; 3) Beta-Carotene; 4) Black Currant Juice; 5) Blueberry Juice; 6) Carrot Juice; 7) Carrot, Purple / Black; 8) Cherry Juice; 9) Chokeberry / Aronia Juice; 10) Elderberry Juice; 11) Grape Juice; 12) Grape Skin Extract; 13) Paprika - divided into two separate listings; one for ground sweet peppers, and one for oil; 14) Pumpkin Juice; 15) Purple Potato Juice; 16) Red Cabbage Extract; 17) Red Radish Extract; 18) Saffron; and 19) Turmeric. The Secretary of Agriculture will accept or reject the recommendations of the NOSB shortly. We anticipate a favorable decision by the Secretary thereby clarifying the use of natural colorants in foods labeled organic or made with organic ingredients.

A database of substances petitioned for use in Organic foods is maintained on the USDA NOP website⁴. This database was last revised on October 18, 2007 and references the Interim Final Rule³ issued by the USDA reflecting the positive recommendation of nonsynthetic colorants to 205.606 by the NOSB and intention, pending public comment, of the USDA to include nineteen (19) specific nonsynthetic colorants on the National List.

Please do not hesitate to contact us with any questions and/or concerns you may have.

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¹Federal Register Vol. 72, No. 199 <http://www.ams.usda.gov/nop/Newsroom/FedRegSunsetReview10-16-07.pdf>

²Federal Register Vol. 71, No. 109 http://www.ams.usda.gov/nop/Newsroom/HarveyvJohannsFR05_23_06.pdf

³Federal Register Vol. 72, No. 123 <http://www.ams.usda.gov/nop/Newsroom/FedRegNoticeNLProcessing062707.pdf>

⁴<http://www.ams.usda.gov/nop/TodaysNews.html>. Substances on this site may not be used in organic production or handling before the effective date of any final rule adding the substance to the National List.