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March 31, 2020

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP
1400 Independence Ave. SW
Room 2648-S, Mail Stop 0268
Washington, DC 20250-0268

Docket ID # AMS-NOP-19-0095

Re. HS: Reclassification of L-Malic Acid

These comments to the National Organic Standards Board (NOSB) on its Spring 2020 agenda are submitted on behalf of Beyond Pesticides. Founded in 1981 as a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to bridge the interests of consumers, farmers and farmworkers, Beyond Pesticides advances improved protections from pesticides and alternative pest management strategies that reduce or eliminate a reliance on pesticides. Our membership and network span the 50 states and the world.

As we commented in relation to the sunset of L-malic acid in 2019, Beyond Pesticides believes the database does not support the listing as a nonsynthetic on §605(a). The new technical review (TR) raises new issues. In addition to the helpful discussion of manufacturing processes in the TR, the additional information based on a patent, included below, should be considered. Furthermore, we believe that some issues are beyond the purview of the HS, and we request that the Materials/GMO Subcommittee (MS/GMO) add fermentation processes to its workplan.

Classification

The TR identifies three major processes of producing L-malic acid by fermentation. Although two of these processes involve microbial fermentation of nonsynthetic substrates, the third—most commonly used—is a two-step process that starts with a synthetic substrate. A fourth method of producing L-malic acid is entirely synthetic. Since the listing on §605(a) does not specify a production method, L-malic acid must be assumed to be synthetic—and hence it should be removed from §605(a) and petitioned for §605(b).

Health and Environmental Impacts

Documentation contained in the TR on the health and environmental impacts of producing L-malic acid is incomplete. The following information comes from the patent¹ for manufacturing L-malic acid by fermentation. There are no restrictions on feedstock or fermenting organisms in the National List listing.

The patent says, “[A] substantial amount of l-malic acid can be accumulated in a culture medium by cultivating a strain of the species *Aspergillus parasiticus* Speare, *Aspergillus flavus* Link and *Aspergillus oryzae* (Ahl'ourg) Cohn.” The carbon source may be glucose, sucrose or molasses, fructose, maltose, mannose, galactose, sorbose, xylose, starch, sorbitol, glycerol, etc.” It continues, “Peptone, ammonium chloride, ammonium nitrate, urea, ammonium sulfate or sodium nitrate can be used in an amount of from 0.2 to 1.5% as nitrogen source. In addition to the carbon and nitrogen sources, 0.015% of potassium dihydrogen phosphate (KH₂PO₄), 0.015% of Patented Nov. 13, 1962 dipotassium hydrogen phosphate (K₂HPO₄), 0.01% of magnesium sulfate (MgSO₄·7H₂O), 0.01% of calcium chloride (CaCl₂·2H₂O), as well as 5 mgr./l. each of ferrous sulfate (FeSO₄·7H₂O) and sodium chloride are added to the culture medium. Further, 0.5 to 10% of organic acid, such as pyruvic and fumaric acid, or the salts thereof may be advantageously used together with the carbon source as fermentation accelerator. Additionally, 1 to 10% of sterile calcium carbonate or magnesium carbonate may be added.... After cultivation is completed, the mycelium is separated from the broth, containing l-malic acid, by filtration. The filtrate is then concentrated in vacuo, thereby yielding l-malic acid salt, such as calcium salt or magnesium salt.

It appears, therefore, that quite a variety of chemicals may be used in the manufacture of L-malic acid, and the NOSB should review them and the process for its impacts on human health and the environment.

Ancillary substances

The ancillary substances associated with this material have not been reviewed or even listed. This is an important piece that needs to be incorporated into the review of every material during sunset. Maleic (<500 ppm) and fumaric (7.5 ppm) acids are impurities that should be considered.²

Essentiality

L-malic acid is used to acidify fruit juices, though it is not restricted to that use by its listing. As an acidulant, the TAP review points out that there are several alternatives available, including organic vinegar and lemon juice, as well as the nonsynthetic lactic acid and citric acid, which are also on the National List—and also produced by fermentation.

¹ 3,063,910 Method of Producing L-Malic Acid by Fermentation <http://www.google.com/patents/US3063910>.

² <http://pubchem.ncbi.nlm.nih.gov/summary/summary.cgi?cid=222656#x321>.

Compatibility

Although the main use of L-malic acid is acidification, the choice of L-malic acid as an acidulant is based on its ability to re-create and improve flavors, which—for a synthetic additive—is not consistent with organic processing. The TR defines its action, “Malic acid also intensifies and extends the impact of flavors, allowing producers to reduce the amount of added flavoring. For example, adding malic acid to jams, jellies, and fruit preparations results in a more natural flavor profile.” It distinguishes this action from re-creating and improving flavors lost during processing. If the NOSB accepts this distinction, it must still ask whether it is compatible with organic production to create artificial flavors.

Conclusion

We conclude that there is not sufficient information to support the relisting of L-malic acid on §605(a). Information from the TR challenges the classification of L-malic acid as nonsynthetic and raises issues of compatibility. Ancillary substances have not been identified or assessed. Therefore, L-malic acid should not be relisted.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Terry Shistar".

Terry Shistar, Ph.D.
Board of Directors