

**Email Attachment From: Zea Sonnabend, California Certified Organic Farmers**

**Subject:**

Thank you for giving California Certified Organic Farmers (CCOF) the opportunity to comment on the proposed amendments to the USDA National List of Allowed and Prohibited Substances (National List), Docket Number TMD-02-03. We have been waiting for some technical corrections to the rule for a long time now and appreciate that some of them have finally been published in regulations. We have also been long awaiting the National Organic Standards Board (NOSB) recommendations that have been made since December of 2000 and are glad to see that some of them are contained in this docket.

However we are concerned that only some of the many NOSB recommendations are contained here and not others, and it raises many questions for us as to how to proceed with our certification decisions involving the use of substances that are not (yet) included in regulation. We request a full regulatory explanation of why some NOSB recommendations have been left out of the rule.

We are submitting some comments on some of the particulars below. In general California Certified Organic Farmers (CCOF) supports the more detailed analysis submitted by the Organic Materials Review Institute, especially the full chart of what NOSB recommendations have still been left out of rulemaking. We urge you to look over this chart carefully.

***Comments on §205.601***

**Pheromones:** We support the addition of passive pheromone dispensers and their associated inert ingredients. Thank you. We also acknowledge the point in OMRI's comments that the phrase "insect attractant" is not strictly correct and the NOSB recommended changing that term.

**Hydrated Lime:** This should be an additional technical correction. The NOSB and OMRI both commented in June 2001 that the annotation in §205.601(i)(3) for hydrated lime is incorrect: "- must be used in a manner that minimizes copper accumulation in the soil." Hydrated lime was approved for crop use by the NOSB in 1995 in the context of a review of Bordeaux mix (copper sulfate plus hydrated lime). We suggest either deleting the annotation, (with its use as a fungicide permitted) or revising it to "for use with copper sulfate which must be used in a manner that minimizes copper accumulation in the soil." (this commenter, Zea Sonnabend, was present and prepared the original TAP review of this substance and know that this is what was voted for as an annotation, even if the minutes do not reflect that. Nobody that was there would argue otherwise, because it just doesn't make sense the way it is.)

***Comments on §205.603 – Livestock***

**Livestock Medications:** The NOSB identified 13 high-priority livestock medications for expedited TAP reviews. We ask why these medications were not included in the proposed amendments, particularly given the urgency with which they were addressed by the NOSB. In October 2002, NOSB also recommended a specific allowance for excipients used in animal drugs to permit formulations of medical products containing approved active ingredients. All of these missing items should be added to the National List out of concern for prudent farm management and animal welfare.

**Minerals for Livestock:** We are concerned about the deletion of, **copper sulfate** (21 CFR §582.80) and **magnesium sulfate** (21 CFR §582.5443) from the National List, and what this means for other livestock minerals. While the December 21, 2000 regulation includes a categorical allowance for "trace minerals, used for enrichment or fortification when FDA

approved," NOP has offered no clarification as to the FDA-approved status of minerals. NOP's policy is not clear with respect to the determination of approved mineral additives for the National List as authorized under OFPA. The minerals mentioned above were the only two for which a TAP review was conducted, and that were recommended to be added to the list by the NOSB. Either they should indeed be added, or an explanation should be given of what the policy is on minerals.

**Excipients:** CCOF supports the October 2002 NOSB recommendation for a suggested language change in §205.603(a) to read as follows:

§205.603(a) excipients, for use in livestock drugs, except:  
(i) reserved [any specific substances that may be prohibited]

### ***Comments on §205.605 – Handling***

**Technical Corrections:** Thank you for the addition of **agar-agar, carageenan, and tartaric acid** to the National List as recommended by the NOSB in 1995. Since tartaric acid was approved by NOSB from both synthetic (made from malic acid) and nonsynthetic sources (made from grapes), CCOF recommends that it also be added to §205.605 (b) to allow use of its synthetic form.

**Calcium sulfate and glucono delta-lactone:** These were both approved, in 2001 and 2002 respectively, and are widely used as the preferred coagulant for certain styles of organic tofu. These two materials were reviewed carefully, a clear need was demonstrated, and NOSB determined that they are clearly functional food additives that meet statutory and regulatory criteria for processing. Why were these omitted from the proposed amendments? CCOF needs decisions like these to be made official in a timely manner, or a clear explanation of what certifiers should be doing with clients who may wish to use these substances in the meantime.

**Potassium hydroxide:** The proposed amendments leave standing the current annotation in §205.605(b) that prohibits lye peeling of fruits and vegetables. In 2001, the NOSB approved an additional use of this substance for peeling peaches used in the individual quick freezing process. This seems to mean that the NOP has reviewed this NOSB recommendation and discarded it, therefore returning to the original wording. What does this mean for certifiers who have been allowing it (we have not had anyone in CCOF wishing to use it yet), or for those of us who accept product from other certifiers in our processed products?

**Peracetic Acid:** This material was reviewed for both crops and handling uses in 2000. It appears in this docket for crops but not in the handling section. There is a strong and demonstrated need for this material and the NOSB determined that it was worth adding to the National List. Where is it? Our clients want a clearly itemized list of what they can and cannot use in organic handling and it is very challenging for certifiers to explain to clients why things are in regulatory limbo. It would be most helpful if the NOP could explain for each material why it is being held up from regulation.

### ***Comments on §205.606 – Handling***

**Gelatin and Orange Shellac:** were both recommended by the NOSB to be added to §205.606, yet neither appear in this docket. The NOSB described these two materials as agricultural ingredients that are subject to the commercial availability clause in this section. The NOP's decision making to not include these two substances in the proposed amendments should be explained. As non-organically produced agricultural products, gelatin and orange shellac cannot be used at present, despite the lengthy petition and review process that found

them both suitable for organic production. Given the extensive evaluation supporting the NOSB recommendations, these two substances should be placed on the National List. Shellac is particularly important to many of our growers as well as handlers in CCOF.

### ***Conclusion***

These comments have been offered in the spirit of cooperation in the NOP's efforts to create regulations that work both for the USDA's needs and for all stakeholders in the organic world. CCOF was one of the originators of reviewing materials in a logical and systematic way, and therefore we know how difficult this can be. We are also aware of the limited resources currently available to the NOP in working with materials review. However, the NOSB review process is at the heart of the Organic Foods Production Act and should be supported in every possible way, including incorporating the decisions into regulation accurately and promptly. We appreciate that this docket has been published, appreciate the chance to comment, and hope that more information is forthcoming in the responses to these comments.

Comments submitted on behalf of CCOF by:

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