

**NATIONAL ORGANIC STANDARDS BOARD
COMMENTS TO REVISED PROPOSED RULE**

**NATIONAL ORGANIC PROGRAM, AMS-TMP-USDA
7 CFR PART 205 [DOCKET NUMBER TMD-00-02-PR]**

JUNE 12, 2000

General Comment

The NOSB recommends that the following explanation of **Organic Agriculture** be set forth as an introductory comment:

Organic agriculture is an ecological production management system that promotes and enhances biodiversity, biological cycles and soil biological activity. It is based on minimal use of off-farm inputs and on management practices that restore, maintain and enhance ecological harmony.

Subpart A - Definition

Section 205.2 Terms defined

“Commercially available” - Definition of this term and documentation plans need to be included as guidelines within organic “practice manuals” that will be developed (not as a component of the Final Rule). Also see Section 205.301(b), (c).

“Compost” – The Board recommends the definition below presented to the NOSB at the Ontario 1998 meeting.

Proper composting must be defined in order that compost that includes manure be considered safe. Compost without manure does not need to follow strict guidelines. Consequently, the NOSB proposed definitions of compost that distinguish between compost with or without manure. The definitions the NOSB developed at the Ontario, CA meeting in March of 1998 are:

“Compost” - The product of an aerobic process by which organic materials are digested by microorganisms. Organic materials added to the composting process (feedstock) are limited to those permitted for crop production by this Rule. Sewage sludge, or feedstock composed of or containing synthetic materials beyond an incidental residue are not permitted in compost.

“Composted manure and Animal Parts” - Manure and animal parts that have been composted in a carefully managed aerobic process to reach temperatures for the duration necessary to effectively stabilize nutrients and reduce pathogen levels. At a minimum, all materials must reach thermophilic conditions, i.e., a temperature of at least 130 degrees F. (55 degrees C.) for at least one day, be thoroughly mixed, and achieve 130 degrees again.

In addition to the manure issue, the definition presented by the USDA does not require aerobic decomposition. Anaerobic decomposition is not composting. It is rotting which produces a different kind of product.

Also, the definition presented in the proposed Rule makes reference to an NRCS practice standard (Code 317), which is targeted at compost facilities not farms and would be a hardship for small-scale farmers. We suggest that NOP develop its own practice standard, similar to that in the Natural Resource, Agriculture, and Engineering Service (NRAES) Publication "On-Farm Composting Handbook" (NRAES-54), which is more appropriate for farmers.

"Excluded Methods" - This term should be broadened to reflect the NOSB definition of genetic engineering so as to prohibit gene deletion and doubling, introduction of a foreign gene and changing the position of genes when such modifications are achieved by recombinant techniques.

"Nonagricultural substance" Delete. Please see Section 205.605 General Comments for rationale.

Not included, recommended for inclusion:

"Processing Aid" - The CFR definition may be workable here as long as it includes "any processing substance not labeled as an ingredient, that contacts an organic ingredient.

"Transition", -The practice required to convert a production operation to organic management systems in accordance with standards and regulations set forth in this Rule and provisions of OFPA.

"Transition Period" - The time between the last application of a prohibited substance and certification of the crop or livestock system as organic.

Subpart B – Applicability

Section 205.101 - Exemptions and exclusions from certification.

(a)(1) Exemptions

The NOSB endorses the OFPA \$5000 Producer operation exemption limit and recommends dropping references to "handling" from Section 205.101 (a)(1).

(c) Records to be maintained by exempt and excluded operations.

The NOSB recommends language in Section 205.101 and/or 205.660 directing the applicable government agency, State organic program, Department of Agriculture, Attorney

General or agent of USDA-AMS to put in place a mechanism to verify the compliance of exempt operations.

Subpart C - Organic Production and Handling Requirements

Section 205.201 Organic production and handling system plan

(5) This Section requires a description of practices to prevent commingling of organic and nonorganic products in split operations and practices to prevent contact of organic production and handling operations and products with prohibited substances on split operations. We support this expanded responsibility for split operations strongly but recommend that the wording more closely match the wording in OFPA 6506 (b) (1) (B) requiring that “appropriate physical facilities, machinery, and management practices are established to prevent the possibility of a mixing of organic and non-organic products or a penetration of prohibited chemicals or other substances on the certified area”.

Section 205.202 Land requirements

(b) This section requires that land has had no prohibited substances applied to it for a period of 3 years. As part of the Organic Plan, using this transition period to rotate a field or farm parcel in and out of organic production should be prohibited.

Section 205.203 Soil fertility and crop nutrient management practice standard.

(c) (1) (i-iii) This section deals with raw animal manure. The NOP has followed the NOSB recommendations on this topic. We support this strongly. Although OFPA has language to the effect that food safety must be ensured when manure is used as a soil amendment, we do not believe that the intent was for NOP to develop a food safety program. Nor do we believe that the intent was for manure to be prohibited because the NOP could not develop such a program.

Manure has always been a major part of agriculture. Before the advent of chemical fertilizers, most agriculture used manure as a source of nutrients for crops. When farmers turned to fertilizers instead of manure they lost all of the other benefits of manure including building soil fertility and structure. Fertilizers simply provide nutrients to the present crop. Many researchers, educators and farmers are now turning back to manure and manure products for just this reason.

We do not suggest that food safety concerns be ignored. Composting manure may be one practice that offers a safe method of dealing with pathogens, such as E. coli 0157:H7; however, composting is not the best practice for all farming systems.

Compost may not provide nearly as much available plant nutrients as manure. Furthermore, even though compost adds vast amounts and diversity of microbes, it may not feed the soil microorganism already present because it has already been partially decomposed in the pile.

New work at the University of Vermont has demonstrated that compost may not serve as well as fresh manure in building soil structure. Fred Magdoff, a nationally recognized soil scientist, presented his new data at last year's New England Small Fruit and Vegetable Conference at which he showed that soil aggregation was enhanced much more by incorporating fresh manure than compost. (Sturbridge, MA, December 1999)

Many studies have emphasized the risk of contamination of food with manure possibly leading to serious food-borne illness. These studies all point to the potential for the survival over a long period of time of a robust population of pathogenic microbes in manure. However, few studies investigated the survival under field conditions. Those few studies that were done under field conditions point to radical crashes in the population size and thus greatly reduced risk once the manure is exposed to the natural environment of the soil in the field. (See Bolton, 1999 summarized in the fact sheet the Crop Committee presented to NOSB).

Ongoing work by Wayne Honeycutt at the USDA, ARS, New England Plant, Soil and Water Laboratory in Orono Maine and C.H. Liao at the Eastern Regional Research Center, USDA, ARS, Wyndmoor, PA has recently shown poor survival of human pathogens in soil after being amended with dairy manure. A decline was observed in the numbers over the growing season. *Listeria* became undetectable ten weeks after manure application, and no *E. coli* was found at harvest of the potato crop.

Studies clearly point to the need for all farmers to take greater precautions when using manure as a source of nutrients for their crops. However, there is no authority for NOP, or justification in OFPA, to require organic agriculture to meet food safety requirements greater than those for conventional agriculture.

On the other hand, we support the guidelines presented by NOP as a precautionary practice. These standards are appropriate and based on the best science available. The standards should be no stricter than those for conventional agriculture. Any stricter standard would impose an undue hardship on organic farmers, have a negative effect on soil health and productivity, and be in violation of OFPA with no valid justification

(c) (3) refers to compost produced in a facility in compliance with the NRCS practice standard 317. As mentioned above, this standard is targeted at commercial composting facilities and is not appropriate for on-farm composting, especially small-scale farms. Again, the Board recommends that NOP develop its own practice standard, based on the NRAES (Natural Resource Agricultural Engineering Service) Publication "On-Farm Composting Handbook" (NRAES-54) or NRAES Publication "Field Guide To On-Farm Composting" (NRAES- 114), which are more appropriate for farmers. In addition, the Board strongly supports the comments submitted by Elaine Ingham of Soil Food Web, Inc. and recommend that these be considered when developing the practice standard.

(d)(2) We recommend that the NOP delete the present language in (d)(2) that makes general reference to "mined minerals of high solubility" and replace with NOSB recommendations regarding specific materials within this category. Please see Section 205.602 for specific references.

(d)(4)(e) This section prohibits the use of synthetic materials as ingredients in compost piles unless they are specifically on the National List. The Board supports this approach.

However, as noted at the NOSB meeting in Buena Park, March 2000, in this section where the Proposed Rule says “National List of synthetic substances allowed for use in organic production”, it should say “National List of synthetic substances allowed for use in organic crop production”, in order that it refer to the specific list in Section 205.601. This change is needed because there are synthetic materials on other lists, e.g., Section 205.605, that would be useful fertilizers but have not been reviewed or approved by the NOSB for crop production use. It is very important to keep these lists clearly distinct.

Section 205.204 Seeds and planting stock practice standard

(a)(1) The intention of this section is unclear. If the intention is to permit nonorganically produced annual seedlings, we do not support that. “Planting stock” in Section 205.2 could be interpreted to include “annual seedlings”. Organically raised annual seedlings should be required. Commercial availability should not be used to justify the use of conventionally raised annual seedlings.

The Board does accept the use of commercial availability to justify the use of conventionally raised seeds, and specifically named planting stock such as potatoes, onion sets, perennial trees, etc. Except, we believe that only organic seeds should be permitted for the production of certified organic sprouts, regardless of commercial availability.

Section 205.208-205.235 [Reserved]

Resolution from Processing, Handling, and Labeling Committee: Honey has significant organic market presence and is currently certified by several State and private certifying agents. The NOSB needs to give priority to the development of organic standards for honey production.

The NOSB made recommendations for standards for mushroom and greenhouse production in Orlando in 1995 and should be included in the Final Rule. These are described in *Toward Organic Integrity, Sligh, July 1997*, pages 144, 150-151, recommended by the NOSB at the Orlando meeting in 1995.

Section 205.236 Origin of Livestock

With respect to the origin of dairy animals, the following language is recommended for transition and whole-herd conversion:

(a)(2) Dairy

Milk or milk products must be from livestock that has been under continuous organic management beginning no later than one year prior to the production of the milk or milk products that are to be sold, labeled, or represented as organic:

Except that when an entire, distinct herd is converted to organic production, the following exemptions may apply:

- (i) for the first nine months of the final twelve-month dairy herd transition period, animals must be fed at least 80% feed that is either organic or self-raised transitional feed.
- (ii) for the final three months animals must be fed 100% organic feed.
- (iii) Once a dairy operation has been converted to organic production all dairy animals shall be under organic management from the last third of gestation: Except that transitional feed raised on the farm may be fed to young stock up to twelve months prior to milk production.

Section 205.237 Livestock feed

- (a) The word “pasture” should be defined as part of the feed requirement.

The NOSB recommends the addition of the following subsection:

- (b) The producer of an organic livestock operation must not
- (7) Use feed, feed additives, feed supplements or animal drugs that are produced with excluded methods.

Section 205.238 Livestock health care practice standard

- (a)(5) With respect to physical alterations, the committee feels that the language used meets both the animal welfare requirements and the necessary practices for good animal husbandry. The language reads: “Performance of physical alterations as needed to promote the animal’s welfare and in a manner that minimizes pain and stress”.

Section 205.239 Livestock living conditions

- (a) With respect to livestock living conditions, the Board recommends three additions/modifications:

- (a)(1) add “all livestock shall have access to the outdoors.”

- (a)(2) change “access to pasture” to read “shall be pasture-based.”

- (b) add (5) when ruminants are in temporary confinement they must have access to dry un-chopped hay.

Please note the following discrepancy in current language in the Preamble and the Rule:

- (a)(2) Access to pasture

The Preamble states on page 13548, “The NOSB specified that the stage of an animal’s production is not intended to include the lactation cycle of dairy animals in which only dry cows would be allowed access to the outside and pasture”. This assertion is incorrect. See

the minutes of NOSB February, 1999 meeting, Board vote taken on February 11, 1999, that does not incorporate any such specific reference.

The language adopted by the Board in this vote states:

“Add to the Board recommendation on Confinement of Livestock in an Organic System “stage of production” and “stage of transition of the farm to organic” on the list of exceptions to the requirement that livestock have access to the outdoors. The management practices must make clear that these additional exemptions in no way change the intent that ruminant organic livestock systems be pasture-based.”

The Livestock committee also strongly urges that the “stage of production” allowance for temporary confinement be fully described in the management practices manual to make it clear that this allowance is restricted to short-term instances such as birthing of a new born calf, finish feeding of slaughter animals, and specifically excludes lactating dairy animals, or other stages of production that constitute a significant portion of the animal’s life.

Not addressed in the Proposed Rule:

The committee recognizes that comments have been received urging that space requirements for confined animals be spelled out and be species specific. The committee agrees that such guidelines should be spelled out but believes that such specificity belongs in the management practices manual and not in the Rule itself. We believe that for the purposes of the Rule, the language requiring living conditions that “maintain livestock living conditions which accommodate the health and natural behavior of the animals” is adequate for the purposes of the Rule. The Board wants to be involved in the process of developing the guidelines for species-specific space requirements for the program manuals.

Section 205.270 Organic handling requirements

(c)(1) The NOSB recommends the following language change: The handler of an organic handling operation must not use in or on an agricultural product intended to be sold, labeled, or represented as “100 percent organic”, “organic”, or “made with organic (specified ingredients)” ionizing radiation for *the purpose of controlling microbial contaminants, pathogens, parasites and pests in food, preserving a food, or inhibiting physiological processes such as sprouting or ripening.*

(c)(3) The NOSB requests the NOP clarify in the Final Rule the requirements for non-organic ingredients in a processed product labeled “made with organic ingredients”.

Subpart D – Labels, Labeling and Market Information

Section 205.300 Use of the term “organic”

The 18-month timeframe for implementation starting from the publication of the final Rule needs to be a clearly stated directive within the Final Rule, in addition to its inclusion within

the question and answer format in the Preamble. Currently, there is no specified timeline in the Rule for a producer or processor to use up label inventory.

Section 205.301 Product composition

(b)(c) Commercially available: Definition and documentation plan needed to be included as guidelines within organic “practice manuals” that will ultimately be developed (not as a component of the Final Rule).

Background: The June 4, 1994, Santa Fe, New Mexico NOSB meeting included “commercial availability” within their final recommendations regarding an Organic Handling Plan. As included on page 60 of *Toward Organic Integrity, Sligh, July 1997*, lines 123-132, “good faith efforts *are expected* to be made to locate or develop a source of the certified organic form of the ingredient”, as well as documentation of “the progress made over the previous years to eliminate non-organic agricultural products as ingredients”. Also, at the April 25, 1995 Orlando, Florida meeting, the NOSB recommended a policy of “commercial non-availability of suitable ingredients in organic form”. See *Toward Organic Integrity, Sligh, July 1997*, page 75 for the language of the recommendation.

The non-organic ingredients included within products labeled as “95% organic” and “made with organic ingredients” must conform to the CFR definition of “natural” and, therefore, must not contain artificial flavors, artificial colors, artificial preservatives (including sulfites), or artificial sweeteners.

(e)(4) The “100% organic” label may contain processing aids if they are of organic origin, i.e. organic rice hulls.

Subpart E - Certification

Section 205.404 Approval of Certification

(b) The need for expiration dates on certificates of certification is based on the perceived need of the marketplace including manufacturers, distributors, brokers and retailers, to know if certification is valid. This information is also important to inspectors and certifying agents to verify valid certification certificates and is a currently accepted certification procedure.

The NOSB Accreditation Committee recommends the addition of the following language under Section 205.404(b)(2)

“Effective date of certification and expiration date for required annual update of certification.”

Section 205.406 Continuation of certification

(d) The Board recommends a safety net for producers who are certified by a certifier that does not become accredited by the USDA. The Rule must clearly state that a certified organic producer will have the full 18-month implementation period starting from the publication of the Final Rule to get re-certified if the producer's certifying company is not accredited. Because NOP anticipates that the accreditation process will require 12 months, producers will, in effect, have six months to be certified by a new company should the producer's certifying company not be accredited.

Subpart F - Accreditation of Certifying Agents

Section 205.500 Areas and duration of accreditation

Provisions may be necessary for the inclusion of foreign certification agencies not accredited by a foreign government, but accredited by private institutions. This proposal, as stated, ignores the NOSB recommendation (June 1994, Santa Fe), which allows for recognition of private sector accreditation by an "International Organic Standards Organization".

Section 205.501 General requirements for accreditation

(a)(1) The "sufficient expertise" requirement assumes the establishment of criteria for determining the necessary level of expertise, which may require training in the specific organic production area, such as crop production, livestock production or food processing. This section should include the requirement that inspectors demonstrate completion of a specified training program, internship, on-going education and/or licensing.

(a)(11) The NOP approach as written places an undue burden on farmer-run and membership-based certifying agencies and the operators they serve. The Board agrees with NOP that potential conflict of interest within the certification process needs to be addressed. All certifying organizations currently address conflict of interest with procedures, but not by prohibiting those with experience from being on the certifying board.

The NOP language can and should be modified to reflect the desired outcome without prohibiting producers from offering valuable expertise to certifying agencies. The current language goes beyond the requirement of ISO Guide 65 which, in Section 5.2.2, states that personnel involved in the certification process must "comply with the Rules defined by the certification body, including those relating to confidentiality and independence from commercial and other interest, and declare any prior and/or present association on their own part of their employer" with the operation seeking certification.

The NOSB requests that its original recommendation made in Santa Fe, June 1994 regarding conflict of interest be included in the Proposed Rule. This recommendation states:

That a certifying agent must have written policies and procedures regarding:

1. the application handling process;
2. disclosure of inspector financial interests and affiliations;
3. the appeal of inspection results;
4. the certification decision making process;
5. disclosure of financial interests and affiliations of members of the decision making body, including conditions of disqualification from decision making; and
6. the appeal of certification decisions.

Please reference the following Definition of Independence (freedom from conflict of interest), *Toward Organic Integrity, Sligh, July 1997*, page 16:

“The term “conflict of interest” is defined as the use by an individual of his or her position for personal advantage or to the detriment of the integrity of the Organic Program. Personal advantage includes interest in another organization by the individual or a member of his or her immediate family (household), or receipt or acceptance of economic or non-economic favors, gifts or benefits of more than nominal value accruing to the individual or his or her designee, other than as part of his or her bona fide compensation.

Owners, officers, staff, committee members, board members, employees and contractors of Certifying Agents who have a financial interest in a farm or handling operation certified by the Certifying Agent, or who otherwise stand to gain financially from a certification decision, except for receipt of agreed upon fees for service or for use of a trademark or seal, must be isolated from those certification decisions in which they have an interest. Certifying Agents act as agents of the Secretary under the Organic Program, so an individual employed by a Certifying Agent represents the Secretary in certification activities.”

Section 205.506 Approval of accreditation

(b)(3) The criteria used to determine the amount and type of security required after approval of accreditation should be affordable and explicitly defined with particular regard for the diverse size and economies of various regional certifiers and operation being certified.

Section 205.508 Site Evaluations

(b) As stated, the proposal allows for the initial site inspection to be conducted “within a reasonable period of time after issuance of the applicant’s ‘notification of accreditation’. The NOSB recommends that the initial site inspection be preformed before a ‘notification of accreditation’ is issued whenever possible, or a provisional accreditation be issued pending site evaluation.

Section 205.509 Peer review

The Board recommends that the composition of the peer review panel be clearly established to keep the integrity of this provision intact.

(c) Any perceived conflict of interest between a member of the review panel and the accrediting authority must be avoided.

The Board expresses concern that there is no compensation for the peer review committee.

Subpart G - Administrative

The National List

Section 205.600 Allowed and prohibited substances and ingredients in organic production and handling

(b) Change language to: Non-organic substances used in or on processed products, except as otherwise provided in 205.605. See General Comment in Section 205.605 for rationale.

Section 205.601 Synthetic substances allowed for use in organic crop production

(e) As insecticides (including acaricides or mite control)

(5) **Oils, Horticultural** – Narrow-range petroleum oils are allowed as dormant, suffocating and summer oils. Aromatic petroleum solvents as a subclass of petroleum-based oils are prohibited.

(i) As plant disease control

(6) **Oils, Horticultural, Narrow-range only**. Narrow-range oils are defined as a petroleum derivative composed predominately of paraffinic and naphthenic fractions with a 50% boiling point at 10mm mercury pressure between 415 degrees F. and 440 degrees F., +/-8 degrees F.

(j)(4)(ii) **Magnesium sulfate** is listed incorrectly as a micronutrient. It needs to be listed as a single substance, using the annotation for magnesium sulfate as previously recommended by the NOSB.

(m) **As synthetic inert ingredients** as classified by EPA,List 4 – Inerts of Minimal Concern.

(1) **Narrow-range oils**, except that narrow-range oils on EPA List 2 are prohibited

The NOSB recommends full public disclosure of inert ingredients in all pesticides and to continue efforts to require full public disclosure of all inerts by the EPA in order that OFPA be fairly and honestly implemented.

AMS and the EPA pesticide program must coordinate responses to the request for disclosure of inert ingredients. As far as the committee is aware, few manufacturers responded to a letter sent by NOP last year. NOP must involve EPA Pesticide Program staff in the effort to obtain disclosure of inerts and necessary health and safety data.

The NOSB has the authority to prohibit specific List 4 inerts, if evidence or a petition is presented to justify such an action. This position is consistent with the policy adopted by the NOSB in February 1999 and provides a check on any questionable or delayed rulings by EPA.

EPA List 4 Inert ingredients allowed in crop production should also be referenced as allowed for Livestock and Processing Materials.

Section 205.602 - Nonsynthetic substances prohibited for use in organic crop production

(g)-(z) [Reserved]

The NOSB recommends that the following nonsynthetic substance be prohibited for use in organic production:

Ash from biosolids or sludge. (Reference made in Section 205-203 (d)(3) and (e)(2).

The NOSB recommends that the following nonsynthetic substances be prohibited from organic crop production with the following exceptions:

“Potassium Chloride” was recommended as follows in Austin 1995:

“Only the mined source is considered nonsynthetic. Any use shall be in a manner that prevents excessive chloride accumulation in soils. Soil testing may be required in both treated and untreated adjacent soils to verify absence of chloride build-up.”

(Note: Potassium chloride is listed in Section 205.605 (20) as an allowed nonagricultural (nonorganic) substance as an ingredient in or on processed products labeled as “organic” or “made with organic ingredients”.)

“Sodium Nitrate” was recommended as follows in Austin 1995:

“The use of Chilean Nitrate [sodium nitrate] (16-0-0) in organic crop production is limited to not more than 20 percent of the total nitrogen supplied to a crop. The producer’s Farm Plan shall contain specific provisions and strategies designed to substantially reduce the use of Chilean Nitrate over time. The amount and timing of these reductions will be consistent with documented site-specific constraints. The Farm Plan will seek to explore each and every alternative to the routine use of Chilean Nitrate in the farming system. These alternatives include, but are not limited to: composting, improvement of compost, leguminous cover crops, interplanting, rotations, microbial enhancements, animal manures, varietal selections, planting date alterations and reducing amounts of applied supplemental nitrogen. The timing and efficiency for Chilean Nitrate applications shall be optimized and documented in the Farm Plan. Certifiers will monitor progress in the reduction of Chilean Nitrate use and will decertify farmers that develop long-term dependence on this material. Strong farmer commitment, aggressive action and measurable results are all necessary elements of this special use of Chilean Nitrate. This policy shall be reviewed within two years.

Section 205.603 Synthetic substances allowed for use in organic livestock production

(a)(11) **“Parasiticides – Ivermectin”**

With respect to parasiticial use as it pertains to breeder stock (last sentence) we recommend an additional phrase to read:

“In breeder stock, treatment cannot occur during the last third of gestation, or during lactation, if the progeny will be sold as organic.”

(a)(13) **Vaccines & Biologics:**

These materials were never approved by the by the NOSB and should be removed from the National List The NOSB needs to give priority to the review of vaccines and biologics.

Please refer to the Statement of Principle regarding inoculants and vaccines *Toward Organic Integrity, Sligh, July 1997*, page 117, indicating an addition to the recommendation for Livestock Production made in Santa Fe, June 1994.

“The Committee believes use of inoculants and vaccines may be necessary to ensure the health of the animal and to remain in compliance with Federal, State or regional regulations.” Specific allowed vaccines and biologics must be included in the National List and their use documented in production records. The Farm Plan should reflect efforts to use proper management, nutrition and genetic selection for disease resistance and longevity.

Section 205.605 – Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients)”

General Comment:

Proposed language recommended by the NOSB for the revised Proposed Rule regarding changes to National List of allowed and prohibited substances in processing:

The National List categories as laid out in Sections 205.605 and §205.606 depend on a distinction between "agricultural" and "non-agricultural" substances. This is extremely confusing to handlers, especially considering that a number of agricultural products have been included in the list of non-agricultural substances (205.605). Therefore the Board recommends the following reorganization of the list and changes to definitions to clarify 1) which substances need to be petitioned to be included on the National List, and 2) which substances are agricultural in nature and will be subject to commercial availability restrictions when they are available organically.

Under this proposal the definition of non-agricultural substance would not be needed. Agricultural product is defined and any ingredient or processing aid not considered an agricultural product would be non-agricultural. In addition, the term “processing aid” may need to be defined since it is used in the headings for the list. See Subpart A – Definitions, Section 205.2 Terms defined.

Change the language in all applicable sections to reflect the change in the titles of the list and the removal of the term *nonagricultural substance* from the definitions. See other sections of the Rule including 205.270, 205.301(b), etc.

Section 205.605

Change the present title of this section to “Non-organic ingredients and processing aids allowed in or on processed food products labeled as “organic” or “made with organic (specified ingredients).””

Change the first paragraph to “The following non-organic ingredients and processing aids may be used.....”

Remove the classification “(a) *Non synthetics allowed.*”

(a)(3) **Baking Powder:**

This material was never approved by the by the NOSB and should be removed from the National List: The NOSB tabled this material in 1995 at the Austin meeting.

Move the following substances from list 205.605 to list 205.606:

(a)(1) **Agar-Agar**

(a)(7) **Carrageenan**

(a)(8) **Cornstarch (Native)**

(a)(12) **Gums** – Water extracted only (arabic, guar, locust bean, carob bean)

(a)(14) **Kelp** – for use only as a thickener and dietary supplement

(a)(15) **Lecithin** – unbleached

(a)(18) **Pectin** (high methoxy)

The following processing materials or annotations should be placed on National List under Section 205.605, as previously recommended by the NOSB:

Natural Flavors: The NOSB recommended in Austin, October 1995, that natural flavors that met certain strict criteria be allowed for use in foods labeled as "organic" and natural flavors that met less strict criteria be allowed for use in foods labeled as "made with organic ingredients." Please refer to *Toward Organic Integrity, Sligh, July 1997*, page 162, for the original recommendation. The NOP proposed Rule does not include any references to natural flavors except in the Preamble on page 13553 as "organic liquid flavoring extracts."

(b) Synthetics allowed:

Remove the classification “(b) *Synthetics allowed.*”

(7) **Calcium Phosphates** (monobasic and dibasic): The NOSB recommended that calcium phosphate (mono-, di-, tri-) be included on the National List. Add **tribasic calcium phosphate** to National List.

The following material was never approved by the by the NOSB as an ingredient in or on processed products and should be removed from the National List:

(19) **Magnesium Sulfate:**

The NOSB approved the natural form of this material in Orlando, 1995. The processing committee was directed to review the synthetic form. Magnesium sulfate should be removed

from Section 205.605. The material was approved for crop production in Ontario, 1998. See Section 205.601 (j)(4)(ii).

(20) **Nutrient Vitamins and Minerals:** The NOSB recommends that 21 CFR 104.20 not be the reference for the allowance of nutrient vitamins and minerals for the organic industry.

The following material was recommended in Ontario, 1998. The following annotation must be added to the National List, Section 205.605:

Sulfur Dioxide:

For use in wine labeled “made with organically grown grapes”, not to exceed levels greater than 100 ppm, and the level of free sulfites may not exceed 35 ppm in the final product.

Section 205.606

Change the present title of this section to “Non-organically produced agricultural products allowed as ingredients or processing aids in or on processed products labeled as organic or made with organic ingredients.”

(Any nonorganically produced product in this category may be used in place of a "commercially unavailable" organic equivalent in accordance with any restrictions specified in this section.)

Include the following ingredients as listed in the Proposed Rule in Section 205.605 in the listing for Section 205.606:

Agar-Agar

Carrageenan

Cornstarch (Native)

Gums – Water extracted only (arabic, guar, locust bean, carob bean)

Kelp – for use only as a thickener and dietary supplement

Lecithin – unbleached

Pectin (high methoxy)

Place the following materials that have been approved by the NOSB and not included in list 205.605 in list 205.606:

Fruit Waxes:

Carnauba wax

Wood Rosin

The NOSB recommended that carnauba wax and wood rosin be added to the National List. The National List does not include any reference to fruit waxes, although they are mentioned in the Preamble.

Additional Comment:

The Organic Materials Review Institute (OMRI) has developed an approach to the structure of the National List. The NOSB lacked sufficient time to review and comment on the approach but suggests that NOP review it in the process of development of the final Rule. .

It should not to be considered as part of the Board’s recommendations.

OMRI provides the following summarized suggestion for restructuring the National List for Processing and Handling:

- 1) Non-organic ingredients that become part of the food and are subject to the FDA's labeling requirement must be on the National List if they appear in a food labeled as "organic" whether they are synthetic or non-synthetic. This list would be titled "Non-organic Ingredients".
- 2) Items that are used to transform the food but do not appear in the final product, except in incidental amounts, are considered processing aids. OMRI believes that only the synthetic processing aids need to appear on the National List and suggest that a separate list be established for processing aids. This list would be titled "Processing Aids".
- 3) Any ingredient should be allowed for use in a "made with organic" product save for those on the list of substances explicitly prohibited for use on the National List. This list would be titled "Non-organic additives prohibited in foods labeled as "made with organic". This is a much more lenient allowance of synthetic ingredients than that currently allowed by the NOSB.
- 4) The final list would be titled "Non-organically produced agricultural products allowed..."
- 5) Current exclusionary language regarding GMO's, irradiation, etc. would be applicable to the use of all ingredients and additives included on the lists.

Please read the OMRI Position Paper on **Organic Processing Requirements June 5, 2000** that was submitted to the NOSB for more details.

State Programs

Section 205.620 Requirements of State organic certification programs

This section confuses State organic certification programs with State programs that do not certify. Clarification is needed to make the distinction between them and to define the authority and areas of compliance of each.

It is understood by the Board that it was not the intent of NOP to make any distinction but it was pointed out that OFPA makes no provision for regulation of state programs that do not certify, only state certification programs.

Fees

Section 205.640 Fees and other charges for accreditation

The Board reaffirms its recommendation made in Ontario 1998 regarding fees for accreditation. Fees for accreditation will determine the fees certifiers charge farmers for certification. In Appendix A of the Proposed Rule, Regulatory Impact of the Proposed Rules is discussed. If accreditation fees are too high, those costs will be passed on to small farmers. The NOP proposal to exempt small farmers is not acceptable. The National Program must be affordable for all commercial farmers, no matter how small. Small farmers must not be

forced to turn to exemption, or any lesser program such as an affidavit or registration program. Small farmers should have the same opportunity to be served by the USDA as large farmers, and consumers buying from small farmers should have the same protection from misinformation or fraud as consumers buying from large farmers. OFPA created the opportunity for exemption so USDA has to offer it, but it should be kept as small as possible.

Section 205.660 Compliance

General Comments:

The Enforcement Task Force will continue as part of the Accreditation Committee and will recommend actions to develop an enforcement program including:

1. MOUs for use in states where there is enforcement authority
2. a violations matrix noting division of enforcement authority and
3. a proposal for a penalty schedule.

The Board recommends that the NOP examine existing models for capturing enforcement fees such as the State of California's registration program for all growers, handlers, and processors who use the word "organic" in marketing their products.

Section 205.662 Noncompliance procedure for certified operations

The Proposed Rule does not address the certifiers' authority to prevent the use of the certifiers' service mark (seal).

The Board reaffirms its recommendation drafted by former Board member Jean Afterman in February 1999 that would allow private certifiers to prevent the use of their service mark (seal) upon:

- 1) written notification that certification by the private certifier has been terminated;
- 2) written notification of 30 days to appeal to the Secretary of Agriculture; and
- 3) written notification of denial to use the private certifier's seal.

The Board recognizes that the USDA seal cannot be removed until full due process (including all appeals) has occurred.

Section 205.671 Exclusion from organic sale

The NOSB recommends that the Pesticide Data Program database be expanded to include as many relevant foods as possible either directly or through crop groupings. For those crops that are not covered by PDP testing, the Board recommends that the 5% of EPA tolerance Rule be used. For those crops for which the Estimated National Mean would be higher than 5% of EPA tolerance, the NOSB recommends that the 5% of EPA tolerance level be used.

However, the NOSB is concerned that ENM levels sampled at the retail level may not accurately reflect conditions at the farm gate.