

**Suggested technical corrections to the NOP Final Rule
Identified by Jim Riddle, Secretary, NOSB
June 2, 2001**

1. § 205.238 Livestock health care practice standard.

(a) The producer must establish and maintain preventive livestock health care practices, including:

Change "including" to "which may include, but are not limited to" to read:

§ 205.238 Livestock health care practice standard.

(a) The producer must establish and maintain preventive livestock health care practices, *which may include, but are not limited to*:

Rationale: As written, all practices listed must be implemented by all livestock operations in order for them to be in compliance.

2. § 205.271 Facility pest management practice standard.

(b) Pests may be controlled through:

(1) Mechanical or physical controls including but not limited to traps, light, or sound; or

(2) Lures and repellents using nonsynthetic or synthetic substances consistent with the National List.

(c) If the practices provided for in paragraphs (a) and (b) of this section are not effective to prevent or control pests, a nonsynthetic or synthetic substance consistent with the National List may be applied.

Change 205.271(b)(2) and 205.271(c) to read:

(2) Lures and repellents using nonsynthetic or synthetic substances *included on* the National List.

(c) If the practices provided for in paragraphs (a) and (b) of this section are not effective to prevent or control pests, a nonsynthetic or synthetic substance *included on* the National List may be applied.

Rationale: The term "consistent with" is not defined, and provides no regulatory guidance. Compliance cannot be assessed. The sections cited above describe pest control substances included on the National List. Sections 205.271(d), (e) and (f) contain the regulatory requirements which must be followed when products not on the National List are used for facility pest control.

3. § 205.290 Temporary variances.

(a) Temporary variances from the requirements in §§ 205.203 through 205.207, 205.236 through 205.239, and 205.270 through 205.272 may be established by the Administrator for the following reasons:

(1) Natural disasters declared by the Secretary;

(2) Damage caused by drought, wind, flood, excessive moisture, hail, tornado, earthquake, fire, or other business interruption; and

(3) Practices used for the purpose of conducting research or trials of techniques, varieties, or ingredients used in organic production or handling.

Change the word "and" to "or" to read:

§ 205.290 Temporary variances.

(a) Temporary variances from the requirements in §§ 205.203 through 205.207, 205.236 through 205.239, and 205.270 through 205.272 may be established by the Administrator for the following reasons:

(1) Natural disasters declared by the Secretary;

- (2) Damage caused by drought, wind, flood, excessive moisture, hail, tornado, earthquake, fire, or other business interruption; *or*
- (3) Practices used for the purpose of conducting research or trials of techniques, varieties, or ingredients used in organic production or handling.

Rationale: The three conditions for granting temporary variances should not be linked by the word "and". As written, all three conditions would have to be met in order for a temporary variance to be granted.

4. § 205.302 Calculating the percentage of organically produced ingredients.

(a) The percentage of all organically produced ingredients in an agricultural product sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))," or that include organic ingredients must be calculated by:

(1) Dividing the total net weight (excluding water and salt) of combined organic ingredients at formulation by the total weight (excluding water and salt) of the finished product.

(2) Dividing the fluid volume of all organic ingredients (excluding water and salt) by the fluid volume of the finished product (excluding water and salt) if the product and ingredients are liquid. If the liquid product is identified on the principal display panel or information panel as being reconstituted from concentrates, the calculation should be made on the basis of single-strength concentrations of the ingredients and finished product.

(3) For products containing organically produced ingredients in both solid and liquid form, dividing the combined weight of the solid ingredients and the weight of the liquid ingredients (excluding water and salt) by the total weight (excluding water and salt) of the finished product.

Replace the words "finished product" with "all ingredients" to read:

§ 205.302 Calculating the percentage of organically produced ingredients.

(a) The percentage of all organically produced ingredients in an agricultural product sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))," or that include organic ingredients must be calculated by:

(1) Dividing the total net weight (excluding water and salt) of combined organic ingredients at formulation by the total weight (excluding water and salt) of *all ingredients*.

(2) Dividing the fluid volume of all organic ingredients (excluding water and salt) by the fluid volume of *all ingredients* (excluding water and salt) if the product and ingredients are liquid. If the liquid product is identified on the principal display panel or information panel as being reconstituted from concentrates, the calculation should be made on the basis of single-strength concentrations of the ingredients.

(3) For products containing organically produced ingredients in both solid and liquid form, dividing the combined weight of the solid ingredients and the weight of the liquid ingredients (excluding water and salt) by the total weight (excluding water and salt) of *all ingredients*.

Rationale: Most products lose weight during processing. Dividing the total weight of all combined organic ingredients by the weight of the finished product could easily show that a product contains over 100% organic ingredients. Current practice is to divide the total weight of all combined organic ingredients by the total weight of all ingredients (excluding water and salt). This calculation establishes the total percentage of organic ingredients. The rule should be changed to correctly calculate the percentage of organic ingredients.

5. § 205.304 Packaged products labeled "made with organic (specified ingredients or food group(s))."

(a) Agricultural products in packages described in § 205.301(c) may display on the principal display panel, information panel, and any other panel and on any labeling or market information concerning the product:

(1) The statement:

(i) "Made with organic (specified ingredients)": Provided, That, the statement does not list more than three organically produced ingredients; or

(ii) "Made with organic (specified food groups)": Provided, That, the statement does not list more than three of the following food groups: beans, fish, fruits, grains, herbs, meats, nuts, oils, poultry, seeds, spices, sweeteners, and vegetables or processed milk products; and, Provided Further, That, all ingredients of each listed food group in the product must be organically produced; and

The word "fish" should be deleted from 205.304(a)(ii) to read:

(ii) "Made with organic (specified food groups)": Provided, That, the statement does not list more than three of the following food groups: beans, fruits, grains, herbs, meats, nuts, oils, poultry, seeds, spices, sweeteners, and vegetables or processed milk products; and, Provided Further, That, all ingredients of each listed food group in the product must be organically produced; and

Rationale: No organic standards have been established for fish, so they should not be listed as an organic food group.

6. § 205.309 Agricultural products in other than packaged form at the point of retail sale that are sold, labeled, or represented as "made with organic (specified ingredients or food group(s))."

(a) Agricultural products in other than packaged form containing between 70 and 95 percent organically produced ingredients may use the phrase, "made with organic (specified ingredients or food group(s))," to modify the name of the product in retail display, labeling, and display containers.

- (1) Such statement must not list more than three organic ingredients or food groups, and
- (2) In any such display of the product's ingredient statement, the organic ingredients are identified as "organic."

Change the word "are" in 205.309(a)(2) to "must be" to read:

(2) In any such display of the product's ingredient statement, the organic ingredients *must be* identified as "organic."

Rationale: Changing the word from "are" to "must be" makes this a clear regulatory requirement.

7. § 205.501 General requirements for accreditation.

(a)(11)(vi) Ensuring that the decision to certify an operation is made by a person different from those who conducted the review of documents and on-site inspection.

Delete "review of documents and" in 205.501(a)(11)(vi) to read:

(vi) Ensuring that the decision to certify an operation is made by a person different from those who conducted the on-site inspection.

Rationale: As indicated during the certifier trainings conducted by the NOP, the exclusion of persons who conduct the review of documents from being involved in certification decisions was a technical error. It is beyond the requirements of ISO Guide 65. Persons who review documents can be involved in certification decisions. Prohibiting inspectors from being involved in certification decisions was the intent of this section.

8. § 205.504 Evidence of expertise and ability.

A private or governmental entity seeking accreditation as a certifying agent must submit the following documents and information to demonstrate its expertise in organic production or handling techniques; its ability to fully comply with and implement the organic certification program established in §§ 205.100 and 205.101, §§ 205.201 through 205.203, §§ 205.300 through 205.303, §§ 205.400 through 205.406, and §§ 205.661 and 205.662; and its ability to comply with the requirements for accreditation set forth in § 205.501:

Change the number “205.203” to “205.290” to read:

§ 205.504 Evidence of expertise and ability.

A private or governmental entity seeking accreditation as a certifying agent must submit the following documents and information to demonstrate its expertise in organic production or handling techniques; its ability to fully comply with and implement the organic certification program established in §§ 205.100 and 205.101, §§ 205.201 through 205.290, §§ 205.300 through 205.303, §§ 205.400 through 205.406, and §§ 205.661 and 205.662; and its ability to comply with the requirements for accreditation set forth in § 205.501:

Rationale: A certifying agent must demonstrate its ability to verify compliance with all organic production and handling standards, not just those contained in sections 205.201 through 205.203.

9. § 205.504 Evidence of expertise and ability.

(d)(2) Copies of at least 3 different inspection reports and certification evaluation documents for production or handling operations certified by the applicant during the previous year for each area of operation for which accreditation is requested; and

Add the words “current or” to 205.504(d)(2) to read:

(2) Copies of at least 3 different inspection reports and certification evaluation documents for production or handling operations certified by the applicant during the *current or* previous year for each area of operation for which accreditation is requested; and

Rationale: If applied literally, the rule would require that a certifying agent must wait one full year before they can apply for accreditation, since the inspection reports that they are required to submit with their application must be from the previous year. Inserting the words “current or” allows certifying agents to be accredited based on their current year’s activities.

10. § 205.601 Synthetic substances allowed for use in organic crop production.

(a)(4) Soap-based algicide/demisters

Change “demisters” to “demossers” in 205.601(a)(4) to read:

(4) Soap-based algicide/*demossers*

Rationale: Correct to be consistent with NOSB recommendation.

11. § 205.601 Synthetic substances allowed for use in organic crop production.

(i)(3) Hydrated lime - must be used in a manner that minimizes copper accumulation in the soil.

Delete “hydrated lime” from this section.

Rationale: The NOSB did not approve hydrated lime for crops. The NOSB approved hydrated lime for livestock, with the following annotation, “not permitted for soil application or to cauterize mutilations or deodorize animal wastes.”

12. § 205.603 Synthetic substances allowed for use in organic livestock production.

(e) As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or a synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances.

(f) EPA List 4 - Inerts of Minimal Concern.

Change "(f)" to "(1)" to read:

(e) As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or a synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances.

(1) EPA List 4 - Inerts of Minimal Concern.

Rationale: This change would clarify that only EPA List 4 inerts are allowed.

13. § 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))."

The following nonagricultural substances may be used as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s))" only in accordance with any restrictions specified in this section.

And

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as organic or made with organic ingredients.

The following nonorganically produced agricultural products may be used as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s))" only in accordance with any restrictions specified in this section.

Delete the words "as ingredients" in 205.605 and 205.606 to read:

§ 205.605 Nonagricultural (nonorganic) substances allowed in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s))."

The following nonagricultural substances may be used in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s))" only in accordance with any restrictions specified in this section.

§ 205.606 Nonorganically produced agricultural products allowed in or on processed products labeled as organic or made with organic ingredients.

The following nonorganically produced agricultural products may be used in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s))" only in accordance with any restrictions specified in this section.

Rationale: Deleting the words "as ingredients" from 205.605 and 205.606 clarifies that all substances used in or on organic products, including ingredients and processing aids, must appear on the National List. It also makes 205.605 and 205.606 consistent with 205.105(c) and (d), which read:

§ 205.105 Allowed and prohibited substances, methods, and ingredients in organic production and handling.

To be sold or labeled as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))," the product must be produced and handled without the use of:

(c) Nonagricultural substances used in or on processed products, except as otherwise provided in § 205.605;

(d) Nonorganic agricultural substances used in or on processed products, except as otherwise provided in § 205.606;

14. § 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))."

The following nonagricultural substances may be used as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s))" only in accordance with any restrictions specified in this section.

(a) Nonsynthetics allowed:

(5) Colors, nonsynthetic sources only

Delete "(5) Colors, nonsynthetic sources only".

Rationale: Nonsynthetic colors were not recommended by the NOSB.