

Section 205.602 Nonsynthetic Substances Prohibited for Use in Organic Crop Production

This final rule amends § 205.602 by adding the following substance:

Calcium chloride, except as a brine-sourced foliar spray to treat physiological disorders associated with calcium uptake.

This final rule revises current paragraph (h) of § 205.602 by amending its annotation to read as follows:

Sodium nitrate—unless use is restricted to no more than 20% of the crop's total nitrogen requirement; use in spirulina production is unrestricted until October 21, 2005.

Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

This final rule revises current subparagraph (4) of § 205.603(a) by correcting the spelling of the word "chlorohexidine" to "chlorhexidine."

This final rule revises paragraph (b)(4) by replacing "Bordeaux mixes" with "as external pest control."

This final rule amends paragraph (d) of § 205.603 (as feed additives) by adding the following three substances:

DL—Methionine, DL—Methionine—Hydroxy Analog, and DL—Methionine—Hydroxy Analog Calcium—for use only in organic poultry production until October 21, 2005.

This final rule revises current subparagraph (1) of § 205.603(d) by removing examples (i) and (ii) copper sulfate and magnesium sulfate, as they are both approved for use by FDA and do not need to be listed individually as examples. As currently published, subparagraphs § 205.603(d)(1)(i) and (ii) may have misled some readers to believe that the use of trace minerals are limited only to copper sulfate and magnesium sulfate. Therefore, the revision made in this final rule for current subparagraph (1) of § 205.603(d) reads "Trace minerals, used for enrichment or fortification when FDA approved."

This final rule amends current paragraph (e) of § 205.603 (as synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or synthetic substances listed in this section and used as active pesticide ingredients in accordance with any limitations on the use of such substances) by redesignating current paragraph (f) of § 205.603 as subparagraph (1) under § 205.603(e). While drafting § 205.603 for final publication in the **Federal Register**,

current paragraph (f) was intended to be designated as § 205.603(e)(1), however, its designation was not properly assigned. Therefore, this final rule redesignates current paragraph (f) of § 205.603 as subparagraph (e)(1) of the same section.

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))"

This final rule amends current paragraph (a) of § 205.605 by adding agar-agar, carageenan and tartaric acid as technical corrections. These substances were included on the National List proposed in the **Federal Register** on December 16, 1997, but were inadvertently omitted from the National List published in the **Federal Register** on March 13, 2000, and the final rule published on December 21, 2000, Final Rule (7 CFR part 205).

This final rule revises current paragraph (b)(10) of § 205.605 by amending its annotation to read as follows:

Ethylene, allowed for postharvest ripening of tropical fruit and degreening of citrus.

Paragraph (b) is further amended by adding tartaric acid as a technical correction.

Ethylene, for organic crop production, was a substance that was petitioned and reviewed for inclusion onto the National List after promulgation of the proposed rule published in the **Federal Register** on March 13, 2000. The NOSB approved and recommended that ethylene gas be included on the National List with the annotation "for regulation of pineapple flowering." After receiving the NOSB recommendation for the material, the NOP, while finalizing the NOS, included the material on the National List without receiving public comment on the material through the Federal rulemaking process. As a result, the proposed rule requested public comment on the use of ethylene gas and this final rule addresses comments that were received on the use of ethylene gas for regulation of pineapple flowering.

III. Related Documents

Eight notices were published regarding the meetings of the NOSB and its deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this final rule were announced for NOSB deliberation in the following **Federal Register** Notices: (1) 64 FR 54858, October 8, 1999, (Ethylene); (2) 65 FR

33802, May 25, 2000, (Ethylene gas); (3) 65 FR 64657, October 30, 2000, (Calcium borogluconate and Peracetic acid); (4) 66 FR 10873, February 20, 2001, (Poloxalene); (5) 66 FR 48654, September 21, 2001, (Calcium chloride, Copper sulfate, Methionine); (6) 67 FR 19375, April 19, 2002, (Potassium sorbate and Sodium propionate); (7) 67 FR 54784, August 26, 2002, (Ozone gas, Pheromones, Sodium (Chilean) nitrate, Propylene glycol, Magnesium hydroxide/Magnesium oxide, Kaolin pectin, Bismuth subsalicylate, Flunixin, Xylazine, Tolazoline, Butorphanol, Mineral oil, Activated charcoal, Epinephrine); and (8) 67 FR 62950, October 9, 2002, (Potassium sulfate and Calcium propionate).

IV. Statutory and Regulatory Authority

The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*), authorizes the Secretary, at § 6517(d)(1), to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion onto or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOS. The current petition process (65 FR 43259) can be accessed through the NOP Web site at <http://www.ams.usda.gov/nop>.

A. Executive Order 12866

This action has been determined to be non-significant for purposes of Executive Order 12866, and therefore, does not have to be reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. The final rule was reviewed under this Executive Order and no additional related information has been obtained since then. This final rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under section 2115 of the Organic Foods Production Act (OFPA) (7 U.S.C. 6514) from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to