

believe these issues will be addressed in those discussions. Sodium nitrate was a subject of considerable debate and review at more than one NOSB public meeting, and the annotation restricting its use reflects an attempt by the NOSB to address all of the concerns that were raised regarding the use of sodium nitrate in organic systems.

The NOSB also commented that the natural substance sodium chloride (also known as salt) should be prohibited and added to 205.602, with the annotation that it be permitted in organic cotton production to comply with emergency spray programs or to prevent immediate loss of crop. The NOSB pointed out that failure to add this material to 205.602 means that it may be used without restriction, when the NOSB recommended its addition to the list of prohibited natural materials in 1995. However, we did not include this material for comment in the proposed rule that was issued in April 2003. Therefore, we believe it is inappropriate to add this material to this final rule without offering the public a chance to comment on the NOSB's recommendation. This material can be included in subsequent rulemaking so that the public can comment on its proposed addition to 205.602, with the annotation recommended by the NOSB.

#### *Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production*

(b) As topical treatment, external parasiticide or local anesthetic as applicable—(4) hydrated lime. The annotation following hydrated lime refers to Bordeaux mixes, which the NOSB correctly points out is a crop protection material, not a livestock material. The NOSB recommended changing the annotation to replace “Bordeaux mixes” with “as external pest control.” We agree and have revised the annotation accordingly.

(d) As feed additives—(1) DL-Methionine; DL-Methionine—hydroxy analog, and DL-Methionine—hydroxy analog calcium—for use only in organic poultry production until October 21, 2005. We received two comments in opposition to the addition of these three methionine materials as a feed additive for organic poultry feed; one comment cited problems with EU harmonization, which we have addressed above. Methionine has been the subject of considerable debate and review at more than one NOSB meeting, and the annotation restricting its use reflects an attempt by the NOSB to address all of the concerns raised regarding the use of methionine in organic systems.

(2) Trace minerals, used for enrichment or fortification when FDA approved. We received two comments raising concerns on this proposed change. One commenter seemed to think that we were eliminating trace minerals from allowed synthetic materials for use in livestock production. We are not eliminating their use; rather we eliminated the references to copper sulfate and magnesium sulfate to eliminate the perception that only those two trace minerals could be used since they were the only two examples listed. As long as the trace mineral is approved by FDA for use in feed supplements for the purpose of enrichment or fortification, the trace mineral is allowed under these regulations. Notwithstanding their allowed use in paragraph (d)(2), producers are also bound to comply with paragraphs (a) and (b) of § 205.237 dealing with livestock feed, including paragraph (b)(2) and (b)(6), which prohibit a producer from providing feed supplements or additives in amounts above those needed for adequate nutrition and health maintenance for the species at its specific stage of life or use feed additives and supplements in violation of the Federal Food, Drug, and Cosmetic Act. These livestock feed standards are also why we did not take the recommended changes of the second commenter that wanted a two-year period of use for minerals approved by the NOSB after a TAP review is conducted, and questioned NOP's policy with respect to trace minerals for animal feeds. This commenter cited an NOSB statement in 1995 that nutrients should come from organic sources, followed by non-synthetic sources if organic is unavailable, and only allowing synthetic sources of minerals if natural sources are unavailable. We believe that the regulations as written, especially § 205.237(a) addresses this concern by requiring feed to be 100 percent organic, with exceptions for nonsynthetic substances and synthetic substances as allowed under § 205.603(d).

#### *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))”*

The proposed rule contained a typographical error, listing both nonsynthetic and synthetic lists as § 205.605(a). The synthetic nonagricultural substance list should be denoted as § 205.605(b).

(b) Synthetics allowed—Tartaric acid. As noted in the proposed rule, tartaric

acid was one of three materials that were inadvertently omitted from publication on the National List in the final regulations that were published on December 21, 2000, and the proposed rule would amend the National List to include tartaric acid in § 205.605(a). However, the NOSB pointed out in their comments that the NOSB had approved both synthetic and nonsynthetic forms of tartaric acid. Accordingly, § 205.605(a) and (b) are amended to include tartaric acid.

Ethylene—we received one comment asking why this is not in the list of synthetic materials approved for crop production, since it deals with ripening for fruit. However, its use is clearly intended for fruit that has left the farm and is enroute to final consumers and is more appropriately considered part of a processing function to prepare the fruit for final purchase. Three commenters opposed its addition to the National List, citing general concerns about adding more synthetic materials to the National List and degrading the status of organic products and one of those comments cited problems with European harmonization.

Congress recognized that synthetic materials might be necessary for organic production to develop and that is why the National List was created in the first place. Moreover, the process of adding a material to the National List is sufficiently rigorous that by itself, the process will provide a natural limit to the number of materials that may be added to the List.

The USDA is currently engaged in discussions with the European Union (EU) concerning harmonization and mutual recognition of our respective standards for organic production and processing, and we believe these issues will be addressed in those discussions.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**.

This rule reflects recommendations submitted to the Secretary by the NOSB. The ten substances proposed to be added to the National List were based on petitions from the industry and evaluated by the NOSB using criteria in the Act and the regulations. Because these substances are critical to organic production and handling operations, the National List should be amended as soon as possible.

#### **List of Subjects in 7 CFR Part 205**

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants,