

*Minnesota Guide to Organic Certification*  
**USDA National Organic Program Rule Summary**

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**Subpart A – Definitions**

Subpart A defines one hundred and five terms used in the NOP regulation.

**Subpart B – Applicability**

The applicability section describes the production and handling operations that must be certified under the NOP. In general, the NOP provides for several significant exemptions and exclusions from certification. The applicability subpart also includes recordkeeping requirements and a broad list of prohibited substances.

**§205.100 What has to be certified.**

1. Requires all organic production and handling operations to be certified unless they are exempt or excluded from certification.
2. Provides for continuation of certification if the production or handling operation was certified by an accredited certifier prior to October 21, 2002.
3. Specifies that knowingly selling a product as organic that is not in compliance with the NOP may result in a \$10,000 civil penalty, per violation.

**§205.101 Exemptions and exclusions from certification.**

**Exemptions**

1. Producers that sell less than \$5,000 worth of organic products are exempt from organic certification requirements. Such products must be produced according to the NOP in order to be labeled “organic.”
2. Handlers that sell less than \$5,000 worth of organic products are exempt from organic certification requirements. Such products must be handled according to the NOP in order to be labeled “organic.”
3. Organic products from exempt producers and handlers may not be used in processed organic food products.
4. Organic products from exempt producers and handlers may be sold at farmers markets and retail stores as organic.
5. Retail food stores are exempt from organic certification requirements.
6. Processors that produce products with less than 70 percent organic ingredients are exempt from organic certification requirements.
7. Processors that produce products that limit their organic claims to the information panel are exempt from organic certification requirements.
8. Exempt handlers must maintain records to track organic ingredients and verify quantities of organic products produced.

**Exclusions**

1. Handlers that only sell packaged organic food products are excluded from organic certification requirements. This exclusion would include produce and grocery distributors.
2. Retailers that have in-store bakeries, delicatessen, salad bar or ready to eat food are excluded from the organic certification requirements.
3. Excluded handlers and retailers must prevent commingling of organic and nonorganic products; prevent contamination of organic products with prohibited substances; and label products according to NOP requirements in section 205.310.

**§ 205.102 Use of the term, “organic.”**

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Specifies that agricultural products sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic ingredients” must be produced and handled in accordance with the National Organic Program requirements.

**§205.103 Recordkeeping by certified operations.**

Specifies that records must be maintained to fully disclose all activities and transactions of the operation; demonstrate compliance with the Act; be maintained for 5 years; and be available for inspection.

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

1. Specifies that synthetic substances are prohibited for use in crop or livestock production unless specifically allowed under the National List.
2. Specifies that nonsynthetic (natural) substances are allowed in crop or livestock production unless specifically prohibited under the National List.
3. Specifies that nonagricultural substances used in processed organic products must be approved on the National List.
4. Specifies that nonorganic agricultural substances used in processed organic products must be approved on the National List.
5. Prohibits genetically modified organisms (defined as “excluded methods”) for use in organic production or handling, except for animal vaccines that appear on the National List.
6. Prohibits the use of ionizing radiation.
7. Prohibits the use of sewage sludge.

**Subpart C – Organic Production and Handling Requirements**

**§205.200 General**

Specifies that organic production practices (for crop and livestock operations) must maintain or improve the natural resources of the operation, including soil and water quality.

**§205.201 Organic production and handling system plan.**

This section requires all producers and handlers to have an organic system plan, approved by an accredited certification agency, that must include:

1. A narrative or descriptive format that identifies the practices and procedures performed. Practices include the methods used for applying manure, fertilizers, or pest control materials; tillage, planting, cultivation, harvest, and storage practices; mechanical and biological methods used to prepare and combine ingredients; methods used to package finished products; and measures taken to exclude pests from a facility. Examples of procedures include protocols established for locating commercially available organic seeds, and procedures to inform neighbors about the organic status of the fields.
2. The plan must include a list of all materials that will be applied to the land or within the handling facility, including information on the composition, source, and location where the substance is used. The plan must also address how the application of these materials meets other requirements of the NOP (e.g. how the operator will prevent any manure applications from contributing to water contamination; or documentation that organic seeds or minor ingredients are not available from organic sources.)
3. The plan must include a description of the monitoring practices used to evaluate the effectiveness of the organic plan. Monitoring practices could include soil tests to monitor fertility management; production objectives such as pounds of product produced per acre or number of organic apples distributed; or results of pesticide residue tests.
4. The plan must include a description of the recordkeeping system used to track a product from harvest through sale; or receiving through shipping; or identifying each animal in production.
5. All operations, including split operations, must describe the management practices and physical barriers that have been established to prevent commingling or contamination of organic food products.
6. Certifying agents may require additional items to be included in the plan to determine if an operation meets the organic requirements.

**Crop Production**

**§205.202 Land requirements.**

1. Requires organic crops to have had no prohibited materials applied within three years of harvest of the first organic crop.
2. Requires distinct boundaries and adequate buffer zones to prevent drift. The NOP does not specify a minimum buffer zone requirement.

**§205.203 Soil fertility and crop nutrient management practice standard.**

1. Standards require organic producers to select tools (e.g., tillers, plows) and practices that maintain or improve soil quality and minimize soil erosion.
2. Producers are required to utilize crop rotations, cover crops and plant and animal materials to maintain or improve soil organic matter content in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, pathogens, heavy metals, or residues of prohibited substances.
3. Prohibits the use of raw manure unless it is incorporated into the soil more than 120 days prior to harvest for crops for human consumption whose edible portion is in direct contact with the soil or soil particles; or 90 days prior to harvest for crops whose edible portion does not contact soil or soil particles.
4. Defines compost as material that has an initial C:N ratio of between 25:1 and 40:1. Requires compost to reach specific temperature parameters for specific time periods. If produced according to requirements, compost can be applied at any time.
5. Allows use of uncomposted plant materials.
6. Allows mined substances of low solubility.
7. Allows the use of fertility inputs on the National List. Prohibits the use of synthetic fertilizers not on the National List.
8. Prohibits the burning of crop residues, except to prevent disease or to stimulate seed germination.
9. Ash from the burning of plant or animal material is allowed, but manure ash is prohibited.
10. Micronutrient trace minerals may be used when soil deficiency is documented by testing. Micronutrients must not be used as defoliant, herbicides, or desiccants. Nitrate and chloride forms are prohibited.

**§205.204 Seeds and planting stock practice standard.**

1. Requires annual seedlings to be organically grown, unless a temporary variance due to natural disaster has been granted by the USDA.
2. Requires perennial transplants to be organically grown for one year prior to harvest.
3. Requires use of organic seeds unless organic seeds are commercially unavailable. Producers have to choose an "equivalent" organic seed variety, when commercially available in the form, quality, and quantity needed. The term, "equivalent," indicates that two seed varieties have similar performance attributes, such as resistance to drought, disease, and insects; and production traits, including yield, size, taste, and shape of the commodity.
4. If organic seeds are unavailable, requires use of untreated seeds.
5. If untreated seeds are unavailable, only allows use of seeds treated with a substance included on the National List. There are currently no allowed seed treatments on the National List. Thus, the NOP currently prohibits the use of treated seeds under all circumstances.
6. Prohibits the use of genetically engineered seeds and planting stock.

**§205.205 Crop rotation practice standard.**

Soil building crop rotations are required to maintain or improve soil organic matter; provide pest management; manage nutrients; and provide erosion control. There is a requirement for cover crops and/or habitat required in perennial crops to provide for pest management.

**§205.206 Crop pest, weed, and disease management practice standard.**

1. The producer must use management practices to prevent crop pests, weeds, and diseases. These practices include crop rotation, nutrient management, sanitation measures, and cultural practices.
2. Producers may use other preventative practices including beneficial insects, natural habitat enhancement, and the use of lures, traps and repellants.
3. Weeds may be controlled by mulching with biodegradable materials, mowing, grazing, mechanical cultivation, hand weeding, or flame, electrical or heat treatments.

4. If plastic mulch is used for mulch, it must be removed at the end of the growing or harvest season.
5. If preventative practices are not adequate to prevent or control pests, weeds or diseases, the producer may use biological or botanical substances or materials allowed under the National List.
6. Producers must not use lumber treated with arsenic or other prohibited substances in direct contact with soil or livestock.

**§205.207 Wild-crop harvesting practice standard.**

Wild crops can be sold and labeled as organic as long as no prohibited materials have been applied to the land for 3 years prior to harvest and harvest of the crop is not destructive to the environment and will sustain the growth and production of the wild crop.

**Livestock Production**

**§205.236 Origin of livestock.**

1. Poultry and edible poultry products (meat and eggs) must be from poultry that has been under organic management since the second day of life.
2. Slaughter stock (animals raised for their meat, e.g. cattle, pigs, sheep) must be under organic management since the last third of gestation.
3. Dairy animals must be under organic management for at least one year prior to the production of organic milk, or a producer may feed farm-raised, third year transitional feed for one year prior to organic milk production.
4. Once a dairy herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation.
5. Breeder stock may be brought onto an organic farm from a nonorganic operation prior to the last third of gestation. Breeder stock must be under organic management during the last third of gestation in order to produce organic offspring.
6. Animals must not be rotated between organic and nonorganic production.
7. Livestock producers must maintain records that preserve the identity of all organic animals and edible and nonedible organic products.

**§205.237 Livestock feed.**

1. Organic livestock must be fed organic feed.
2. Organic feed may contain feed additives and feed supplements that are allowed on the National List. Approved feed supplements include nonsynthetic substances (e.g. fish meal) and synthetic milk replacers for emergency use only (must not contain antibiotics or be from rBST-treated animals).
3. Approved feed additives include trace minerals and vitamins approved by FDA and listed by the American Association of Feed Control Officials (AAFCO).
4. Prohibits use of animal drugs to promote growth.
5. Prohibits feed supplements or additives in amounts in excess of basic nutritional needs of the animal species.
6. Prohibits plastic pellets for roughage and feeds containing urea, manure, or mammalian or poultry slaughter by-products.

**§205.238 Livestock health care practice standard.**

1. The producer must establish preventative health care practices such as:
  - Selection of species and types of livestock with regard to resistance to disease and parasites.
  - Providing quality feed.
  - Establishing living conditions that minimize occurrence and spread of disease and parasites.
  - Provide conditions that allow for exercise, freedom of movement, and reduction of stress.
  - Perform physical alterations (e.g. beak trimming) as needed to promote the animal's welfare in a manner that minimizes pain and stress.
  - Administer vaccines and veterinary biologics.
2. When preventative practices are not adequate to prevent sickness, producers may use synthetic medications allowed on the National List. Approved medications include aspirin; vaccines; chlorohexidine for surgical procedures and teat dip; electrolytes; glucose; glycerin as a teat dip; iodine; hydrogen peroxide; magnesium sulfate; oxytocin for postparturition; lidocaine or procaine as a local anesthetic, with extended withdrawal period; mineral oil for topical use; copper sulfate for external use; and

mineral oil for external use.

3. Ivermectin may be used on breeder stock prior to the last third of gestation and dairy stock at least 90 days prior to milk production, when preventative measures fail.
4. DL-Methionine may be used as a feed supplement for poultry until October 1, 2008.
5. Antibiotics are prohibited for slaughter stock, poultry and dairy stock.
6. It is prohibited to administer any medication or drug in the absence of illness.
7. Hormones are prohibited.
8. It is prohibited to withhold medical treatment from a sick animal to preserve its organic status. Livestock treated with prohibited substances must be clearly identified and not sold as organic.

#### **§205.239 Livestock living condition.**

1. Producers must establish living conditions that accommodate the health and natural behavior of the animals, including:
  - Access to the outdoors, shade, shelter, fresh air as suitable to the species.
  - Access to pasture for ruminants.
  - Appropriate clean, dry bedding. If the bedding is consumed, it must be organic.
2. The producer may provide temporary confinement because of inclement weather, the animal's stage of production (e.g. young birds, finishing cattle), risk to the animal's health or safety, or risk to soil or water quality.
3. The producer must manage manure in a manner that does not contribute to the contamination of crops, soil or water, and optimize the recycling of nutrients.

### **Handling**

#### **§205.270 Organic handling requirements.**

This section provides general requirements for ingredients and practices used in organic processing.

1. Approved processing methods include cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, distilling, extracting, slaughtering, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, chilling, or otherwise manufacturing, and the packaging, canning, jarring, or otherwise enclosing food in a container.
2. All ingredients and processing aids used in "100% organic" food must be 100% organic.
3. All agricultural ingredients in "organic" food (at least 95% organic ingredients) must be either organic or not commercially available in organic form, if listed on 205.606. Nonagricultural ingredients and processing aids must appear on 205.605. All ingredients must also not be genetically engineered; irradiated; produced from sewage sludge; or be produced with a volatile synthetic solvents.
4. All agricultural ingredients in products labeled "made with organic ingredients" (at least 70% organic ingredients) must not be genetically engineered; irradiated; or produced from sewage sludge. All non-agricultural ingredients and processing aids used in products labeled "made with organic ingredients" must appear on 205.605.

#### **§205.271 Facility pest management practice standard.**

1. The handler must use management practices to prevent pests, including removal of pest habitat; prevention of access to facilities; good sanitation; and managing environmental factors to prevent pest reproduction.
2. The handler may use mechanical traps; lures and repellants (must be natural or on National List).
3. If preventative practices are not adequate, the handler may use materials approved on the National List.
4. If the preventative practices and the materials approved on the National List are not adequate to control pests, the handler may use a synthetic substance that is not on the National List as long as the material does not contact the organic products (e.g. the organic products are removed during treatment or the organic products are in sealed containers).
5. Records must be kept of all inputs used for facility pest control and steps taken to prevent contamination of organic products and packaging.

#### **§205.272 Commingling and contact with prohibited substance prevention practice standard.**

1. The handler must implement procedures to prevent commingling (mixing of organic and nonorganic ingredients or products).

2. The handler must implement procedures to prevent organic products from contacting prohibited substances.
3. Containers and packaging materials must not contain preservatives, fungicides, or fumigants.
4. Containers may be reused as long as they are thoroughly cleaned and pose no risk of contact with prohibited substances.

#### **§205.290 Temporary variances.**

1. Temporary variances to certain organic production and handling requirements may be granted by the USDA for natural disasters; damage from drought, flood, hail, tornado, earthquake or other business interruption; and for research.
2. A State organic program or state certifying agent may recommend to the USDA that a temporary variance should be granted.
3. Temporary variances will not be granted for the use of prohibited synthetic or natural substances; genetically modified organisms; irradiation; or sewage sludge.

#### **Subpart D - Labels, Labeling and Market Information**

The National Organic Program has created five label categories for organic food:

1. **100 percent organic** – All ingredients and processing aids must be 100% organic.
2. **Organic** – At least 95% of ingredients must be organic.
3. **Made with organic ingredients** – At least 70% of ingredients must be organic.
4. **Products with less than 70% organic ingredients.**
5. **Organic Livestock feed.**

#### **Key definitions –**

Processing aid – A substance used during processing that does not become an ingredient or is present at insignificant levels in the finished food product.

Principal display panel – That part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for sale.

Information panel – That part of the label of a packaged product that is immediately contiguous to and to the right of the principal display panel as observed by an individual facing that principal display panel, unless another section of the label is designated as the information panel because of package size or other package attributes.

Ingredients statement – the list of ingredients contained in a product shown in their common and usual names in the descending order of predominance.

#### **§205.300 Use of the term, “organic.”**

This section specifies that the term “organic” may only be used on labels that comply with the National Organic Program regulations. The word “organic” must not be used on a product label to modify a nonorganic ingredient. Products for export may be labeled to meet the receiving countries’ specifications as long as they are labeled “for export only.” Products imported to the United States from foreign countries must be certified and labeled according to the NOP regulations.

#### **§205.301 Product Composition**

1. **100 percent organic** – All ingredients and processing aids used in 100% organic food must be 100% organic.
2. **Organic** – At least 95% of ingredients must be organic. All agricultural ingredients in the product must be either organic or not commercially available in organic form and listed on 205.606. All non-organic agricultural ingredients must not be genetically engineered; irradiated; produced from sewage sludge; or be produced with a volatile synthetic solvent. All non-agricultural ingredients and processing aids used must be approved on the National List.
3. **Made with organic ingredients** – At least 70% of ingredients must be organic. All non-organic agricultural ingredients must not be genetically engineered; irradiated; or produced from sewage sludge. All non-agricultural ingredients and processing aids must be approved on the National List.

**4. Products with less than 70% organic ingredients.** All organic ingredients must be produced in compliance with the NOP regulations. There are no restrictions on the non-organic ingredients used in this labeling category.

**5. Livestock feed** – Organic livestock feed must include only organic agricultural ingredients and approved feed additives and supplements.

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

This section describes the procedure for determining the percentage of organic ingredients in a food product. The percentage of organic ingredients is determined by dividing the sum of the organic ingredients by the sum of all ingredients, at formulation, by weight or fluid volume. Water and salt are not included in the calculation of the percentage of organic ingredients.

**§205.303 Packaged products labeled “100 percent organic” or “organic.”**

Optional labeling provisions - Products in these categories may display on the principal display panel:

- The percentage of organic ingredients,
- The USDA seal,
- The seal of the state or private certification agency,
- The term “100 percent organic” or “organic” as appropriate,

Required labeling provisions – Products in these categories must:

- Identify each organic ingredient with the word , “organic,” or with an asterisk that identifies the ingredient as organic.
- Water and salt cannot be identified as organic.
- On the information panel, the statement “Certified organic by ... (name of certifying agent).”

**§205.304 Packaged products labeled “made with organic (specified ingredients or food groups(s)).”**

Optional labeling provisions - Products in this category may display on the principal display panel:

- The percentage of organic ingredients,
- The seal of the state or private certification agency,
- The term “made with organic (specified ingredients)” as appropriate. The term “made with organic (specified ingredients)” must appear in letters that do not exceed one-half the size of the product identity.

Required labeling provisions – Products in this category must:

- Identify each organic ingredient with the word , “organic,” or with an asterisk that identifies the ingredient as organic.
- Water and salt cannot be identified as organic.
- On the information panel, the statement “Certified organic by ... (name of certifying agent).”

Prohibited labeling provisions – Products in this category must not display:

- The USDA seal.

**§205.305 Multi-ingredient packaged products with less than 70 percent organically produced ingredients.**

Optional labeling provisions - Products in this category may display on the information panel:

- Identify each organic ingredient with the word , “organic,” or with an asterisk that identifies the ingredient as organic.
- If the organic ingredients are identified on the ingredients statement then the percentage of organic ingredients may be displayed on the information panel.

Prohibited labeling provisions – Products in this category must not display:

- The word “organic,” on the principal display panel,
- The USDA seal,
- The seal of the state or private certification agency, or
- The statement “Certified organic by ... (name of certifying agent).”

**§205.306 Labeling of livestock feed.**

Optional labeling provisions – Organic livestock feed may display on any package panel:

- The USDA seal,
- The seal of the state or private certification agency,

- The term “100 percent organic” or “organic” as appropriate,
- Identify each organic ingredient with the word , “organic,” or with an asterisk that identifies the ingredient as organic.
- Water and salt cannot be identified as organic.

Required labeling provisions – Organic livestock feed must display:

- On the information panel, the statement “Certified organic by ... (name of certifying agent).”

**§205.307 Labeling of nonretail containers used for only shipping or storage of raw or processed agricultural products labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)).”**

Optional labeling provisions – These products may display:

- The name of the certifying agent.
- Identification of the product as organic.
- The seal of the state or private certification agency.
- The USDA seal.

Required labeling provisions – These products must display:

- The production lot number to maintain identity of organic products.

Export labeling provisions – Products for export may display:

- May be labeled in accordance with foreign labeling requirements provided that they are labeled “For Export Only.”

**§205.308 Agricultural products in other than packaged form (e.g. produce, bulk food) at the point of retail sale that are sold, labeled, or represented as “100 percent organic” or “organic.”**

Optional labeling provisions – Retailers may display on non-packaged “100 percent organic” and “organic” products (e.g. produce, bulk food):

- The term “100 percent organic” or “organic” as appropriate.
- The seal of the state or private certification agency.
- The USDA seal.

**§205.309 Agricultural products in other than packaged form (e.g. bulk food) at the point of retail sale that are sold, labeled, or represented as “made with organic (specified ingredients or food groups (s)).”**

Optional labeling provisions – Retailers may display on non-packaged “made with organic (specified ingredients)” products (e.g. bulk food):

- The seal of the state or private certification agency,
- The term “made with organic (specified ingredients)” as appropriate. The term “made with organic (specified ingredients)” must appear in letters that do not exceed one-half the size of the product identity, provided that each organic ingredient is identified with the word , “organic,” or with an asterisk that identifies the ingredient as organic.

**§205.310 Agricultural products produced on an exempt or excluded operation.**

Optional labeling provisions – Organic products from exempt or excluded operations may:

- Identify organic products as organic. These organic products may not be used as an organic ingredient in processed organic products.

Prohibited labeling provisions – Organic products from exempt or excluded operations must not display:

- The USDA seal.
- The seal of the state or private certification agency.
- Be represented as a certified organic product.

**§205.311 USDA Seal.**

It’s round and it says “USDA ORGANIC.”

**Subpart E - Certification**

The Certification subpart specifies the requirements for certification including the application requirements, inspection procedures and conditions for granting and denying certification.



#### **§205.400 General Requirements for certification**

Persons seeking to receive or maintain organic certification must:

- Comply with the standards.
- Establish and implement an organic production or handling system plan.
- Update the plan on an annual basis.
- Permit on-site inspections.
- Maintain records for five years.
- Pay annual application fees.

Certified operations are required to immediately notify the certifying agent concerning:

- Any application, including drift, of any prohibited substance to any field, production unit, site, facility, livestock, or product that is part of the operation; and
- Any change to the operation or portion of the operation that may affect its organic status.

#### **§205.401 Application for certification**

Application – Must contain organic production and handling system plan and appropriate fees.

#### **§205.402 Review of application**

1. The certifying agent is responsible for reviewing the application and responding to applicant within a reasonable amount of time. The response to the application must communicate whether the applicant appears to comply or has the ability to comply with the organic regulations.
2. The certifying agent must schedule an inspection to determine whether the applicant qualifies for certification.
3. The applicant may withdraw application at any time.

#### **§205.402 On-site inspections.**

1. Initial inspection must be conducted within a reasonable period of time. Inspection must be conducted when the land, facilities, and activities that demonstrate compliance or capacity to comply can be observed.
2. Initial inspection must be conducted within 6 months of application or time of renewal.
3. Additional announced or unannounced inspections may be conducted at the discretion of the certifying agent.
4. All inspections must be conducted with an authorized representative who is knowledgeable about the operation.
5. The inspection must verify that the operation is in compliance or has the capability to comply with the organic regulations.
6. The inspection must verify that the organic production and handling system plan accurately reflects the practices used by the applicant.
7. The inspection must verify that no prohibited substances have been applied.
8. Inspectors must conduct an exit interview with an authorized representative who is knowledgeable about the inspected operation. The purpose of the exit interview is to discuss known issues of concern regarding their application for organic certification and identify any missing information.
9. The certifying agent must provide a copy of the inspection report to the inspected operation within a reasonable time frame.

#### **§205.404 Granting certification**

1. The certifying agent must review the on-site inspection report within a reasonable time frame and grant certification if the operation is in compliance with the organic regulations.
2. The criteria for granting certification are 1) the applicant's operation is in compliance with the organic standards and 2) that the applicant is able to conduct operations in accordance with its organic system plan.
3. Once certified, a producer's or handler's organic certification continues until it is suspended or revoked by the State Organic Program, or voluntarily withdrawn from the program by the applicant.

#### **§205.405 Denial of certification (Note: This pertains to new applicants only)**

1. When an applicant is not in compliance or not able to comply with the organic regulations, the certifying agent must issue a notification of noncompliance that specifies 1) each noncompliance; and

- 2) the date by which the rebuttal or correction of the noncompliance must occur .
2. Upon receipt of the notice of noncompliance the applicant may 1) Correct the noncompliance; or 2) Submit information to rebut the noncompliance.
3. A notice of denial of certification is issued when a correction of noncompliance is not possible; when an applicant fails to respond to a notice of noncompliance; or when the corrective actions are not sufficient for qualifying for certification.
4. A notice of denial of certification must state the reasons for denial, include information about the applicant's right to reapply for certification, request mediation, or file an appeal of the denial.
5. An applicant may be denied certification for willfully making a false statement or misrepresenting the applicant's operation.

**§205.406 Continuation of certification (Note: This pertains to renewal applicants only)**

1. To continue certification an operation must annually pay certification fees and submit an updated organic production or handling system plan.
2. An on-site inspection must be conducted within six months of the renewal date.
3. When a certified operation is not in compliance with the organic regulations, the certifying agent must issue a notification of noncompliance that specifies: 1) each noncompliance; and 2) the date by which the rebuttal or correction of the noncompliance must occur.
4. Upon receipt of the notice of noncompliance the certified operation may: 1) Correct the noncompliance; or 2) Submit information to rebut the noncompliance.
5. A notice of proposed revocation of certification is issued when a certified operation fails to take the corrective actions within the prescribed time period.
7. A notice of proposed revocation of certification must state the reasons for the proposed revocation; the proposed effective date; and the right to appeal or request mediation.

**Subpart F – Accreditation of Certifying Agents**

**205.500 Areas and Duration of Accreditation.**

1. The NOP shall accredit qualified domestic or foreign applicants to certify production or handling operations.
2. Accreditation may be issued for crop certification, livestock certification, wild crop certification, handling certification or any combination of certification areas.
3. Accreditation shall be for five years.
4. Foreign certifying agents may be accepted by USDA under the following criteria:
  - The foreign certifier is accredited by the foreign government authority to meet NOP requirements, or
  - The foreign government that accredited the certifier has an equivalency agreement with the United States.

**205.501 General Requirements for Accreditation.**

This section contains the criteria that must be met. For a private or state certifier to obtain accreditation, the certifier must:

1. have sufficient expertise in organic production and handling.
2. demonstrate the ability to comply with the requirements for accreditation.
3. carry out the provisions of the National Organic Program.
4. use a sufficient number of adequately trained personnel.
5. ensure that personnel have sufficient expertise in organic production and handling.
6. ensure that all personnel have an annual performance evaluation.
7. conduct an annual program review of its certification activities.
8. provide sufficient information to persons seeking certification to enable them to comply with the regulations.
9. Maintain required records.
10. Maintain confidentiality of records.
11. Prevent conflict of interest.
12. Accept the certification decisions made by another certifying agent accredited or accepted by USDA.
13. Submit to the NOP any notice of denial of certification, notification of noncompliance, notification of proposed revocation; and an annual list of the name address and telephone number of all operations granted certification.

14. Pay the accreditation fees to USDA.
15. Provide the inspector with copies of previous inspection reports, and decisions regarding the certification of production and handling operations that they inspect.
16. Comply with a State's organic program for the states that the certifier operates within.
17. Certifiers may establish a seal or logo to identify products certified by that certifier.
18. Certifiers may not require any additional requirements as a condition for allowing the use of its seal or logo.

**205.502 Applying for accreditation.**

This section specifies where the application for accreditation must be sent.

**205.503 Applicant information.**

This section specifies the information that must be submitted by the applicant for accreditation.

**205.504 Evidence of expertise and ability.**

This section specifies the information that must be submitted to demonstrate its expertise in organic production and handling.

**205.505 Statement of agreement.**

This section specifies the conditions that state and private certification agencies need to agree to in order to obtain accreditation. An accredited certifier must agree to accept the certification decisions made by another USDA-accredited certifier; refrain from making false or misleading claims in regards to its accreditation status; conduct annual performance evaluations of all persons; have an internal review process; pay required fees; and meet other terms and conditions. In addition to these criteria, private certifiers must hold the Secretary harmless and furnish reasonable security to protect the rights of certified operations.

**205.506 Granting accreditation.**

1. Accreditation is granted when: 1) the required information is submitted; 2) the fees are paid; and 3) the NOP determines that the accreditation criteria have been met.
2. Accreditation is granted for one or more specific areas such as crops, livestock, wild crops, or handling.

**205.507 Denial of accreditation.**

This section specifies the process that the NOP must follow in order to deny accreditation to a certifier.

**205.508 Site evaluations.**

Site evaluations of certifiers are conducted to examine a certifier's compliance with the NOP. Site evaluations are conducted by NOP staff and involve reviewing certification procedures and production and handling operations certified by the certifier. Site evaluations are conducted at least once during the five year accreditation period.

**205.509 Peer review panel.**

The NOP will establish a peer review panel to review the NOP accreditation policies and procedures and ensure the procedures meet ISO Guide 61 standards (General requirements for assessment and accreditation of certification/registration bodies).

**205.510 Annual report, recordkeeping, and renewal of accreditation.**

1. Accredited certifiers must submit an annual report that includes any changes to the certification program; a description of measures taken to address the terms and conditions of the accreditation; the most recent performance evaluations; the annual program review; and the required fees.
2. Certifiers must maintain required records (most records must be maintained for ten years).
3. Renewal of accreditation occurs every five years. Certifiers must apply to renew their accreditation at least six months prior to the expiration date of their accreditation.

**Subpart G – Administrative**

### **The National List of Allowed and Prohibited Substances**

The National List within the NOP is constructed very differently than most approved material lists. Under the NOP, all nonsynthetic substances (= natural materials) are allowed to be used unless they are specifically prohibited. Conversely, all synthetic substances are prohibited unless specifically allowed. The difficulty with this approach is that it is often difficult to determine whether a material is natural or synthetic. In addition, many materials that are approved for use in organic crop production are not included on the National List because they are nonsynthetic (= natural).

The NOP defines “synthetic” as “a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring sources, except that such term shall not apply to substances created by naturally occurring biological processes.”

### **205.600 Evaluation criteria for allowed and prohibited substances, methods, and ingredients.**

The criteria for adding a synthetic substance to the National List for use in organic crop production or for adding to processed organic food is:

1. The substance cannot be produced from a natural source and there are no organic substitutes.
2. The substance’s manufacture, use and disposal do not have adverse effects on the environment.
3. The nutritional quality of the food is maintained when the substance is used.
4. The substance or its breakdown products do not have an adverse effect on human health.
5. The substance’s primary use is not as a preservative or to recreate flavors, colors, textures, or nutritive value lost during processing.
6. If used in food, the substance is listed as generally regarded as safe (GRAS) by FDA.
7. The substance is essential to the handling of organic food products.
8. Use of the substance is compatible with organic production and handling.

### **205.601 Synthetic substances allowed for use in organic crop production.**

In accordance with restrictions specified in this section, the following synthetic substances may be used in organic crop production: *Provided*, That, use of such substances do not contribute to contamination of crops, soil, or water. Substances allowed by this section, except disinfectants and sanitizers in paragraph (a) and those substances in paragraphs (c), (j), (k), and (l) of this section, may only be used when the provisions set forth in §205.206(a) through (d) prove insufficient to prevent or control the target pest.

(a) As algicide, disinfectants, and sanitizer, including irrigation system cleaning systems.

(1) Alcohols.

(i) Ethanol.

(ii) Isopropanol.

(2) Chlorine materials—*Except*, That, residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act.

(i) Calcium hypochlorite.

(ii) Chlorine dioxide.

(iii) Sodium hypochlorite.

(3) Copper sulfate—for use as an algicide in aquatic rice systems, is limited to one application per field during any 24-month period. Application rates are limited to those which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.

(4) Hydrogen peroxide.

(5) Ozone gas—for use as an irrigation system cleaner only.

(6) Peracetic acid—for use in disinfecting equipment, seed, and asexually propagated planting material.

(7) Soap-based algicide/demossers.

(b) As herbicides, weed barriers, as applicable.

(1) Herbicides, soap-based—for use in farmstead maintenance (roadways, ditches, right of ways, building perimeters) and ornamental crops.

(2) Mulches.

(i) Newspaper or other recycled paper, without glossy or colored inks.

(ii) Plastic mulch and covers (petroleum-based other than polyvinyl chloride (PVC)).

USDA National Organic Program Rule Summary

- (c) As compost feedstocks—Newspapers or other recycled paper, without glossy or colored inks.
- (d) As animal repellents—Soaps, ammonium—for use as a large animal repellent only, no contact with soil or edible portion of crop.
- (e) As insecticides (including acaricides or mite control).
  - (1) Ammonium carbonate—for use as bait in insect traps only, no direct contact with crop or soil.
  - (2) Boric acid—structural pest control, no direct contact with organic food or crops.
  - (3) Copper sulfate—for use as tadpole shrimp control in aquatic rice production, is limited to one application per field during any 24-month period. Application rates are limited to levels which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.
  - (4) Elemental sulfur.
  - (5) Lime sulfur—including calcium polysulfide.
  - (6) Oils, horticultural—narrow range oils as dormant, suffocating, and summer oils.
  - (7) Soaps, insecticidal.
  - (8) Sticky traps/barriers.
- (f) As insect management. Pheromones.
- (g) As rodenticides.
  - (1) Sulfur dioxide—underground rodent control only (smoke bombs).
  - (2) Vitamin D<sub>3</sub>.
- (h) As slug or snail bait. Ferric phosphate (CAS # 10045–86–0).
- (i) As plant disease control.
  - (1) Coppers, fixed—copper hydroxide, copper oxide, copper oxychloride, includes products exempted from EPA tolerance, *Provided*, That, copper-based materials must be used in a manner that minimizes accumulation in the soil and shall not be used as herbicides.
  - (2) Copper sulfate—Substance must be used in a manner that minimizes accumulation of copper in the soil.
  - (3) Hydrated lime.
  - (4) Hydrogen peroxide.
  - (5) Lime sulfur.
  - (6) Oils, horticultural, narrow range oils as dormant, suffocating, and summer oils.
  - (7) Peracetic acid—for use to control fire blight bacteria.
  - (8) Potassium bicarbonate.
  - (9) Elemental sulfur.
  - (10) Streptomycin, for fire blight control in apples and pears only.
  - (11) Tetracycline (oxytetracycline calcium complex), for fire blight control only.
- (j) As plant or soil amendments.
  - (1) Aquatic plant extracts (other than hydrolyzed)—Extraction process is limited to the use of potassium hydroxide or sodium hydroxide; solvent amount used is limited to that amount necessary for extraction.
  - (2) Elemental sulfur.
  - (3) Humic acids—naturally occurring deposits, water and alkali extracts only.
  - (4) Lignin sulfonate—chelating agent, dust suppressant, floatation agent.
  - (5) Magnesium sulfate—allowed with a documented soil deficiency.
  - (6) Micronutrients—not to be used as a defoliant, herbicide, or desiccant. Those made from nitrates or chlorides are not allowed. Soil deficiency must be documented by testing.
- (i) Soluble boron products.
- (ii) Sulfates, carbonates, oxides, or silicates of zinc, copper, iron, manganese, molybdenum, selenium, and cobalt.
- (7) Liquid fish products—can be pH adjusted with sulfuric, citric or phosphoric acid. The amount of acid used shall not exceed the minimum needed to lower the pH to 3.5.
- (8) Vitamins, B<sub>1</sub>, C, and E.

- (k) As plant growth regulators. Ethylene gas—for regulation of pineapple flowering.
- (l) As floating agents in postharvest handling.
  - (1) Lignin sulfonate.
  - (2) Sodium silicate—for tree fruit and fiber processing.
- (m) 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 an active pesticide ingredient in accordance with any limitations on the use of such substances.
  - (1) EPA List 4—Inerts of Minimal Concern.
  - (2) EPA List 3—Inerts of Unknown Toxicity allowed:
    - (i) Glycerine Oleate (Glycerol monooleate) (CAS #s 37220–82–9)—for use only until December 31, 2006.
    - (ii) Inerts used in passive pheromone dispensers.
- (n) Seed preparations. Hydrogen chloride (CAS # 7647–01–0)—for delinting cotton seed for planting.

**205.602 Nonsynthetic substances prohibited for use in organic crop production.**

The following nonsynthetic substances may not be used in organic crop production:

- (a) Ash from manure burning.
- (b) Arsenic.
- (c) Calcium chloride, brine process is natural and prohibited for use except as a foliar spray to treat a physiological disorder associated with calcium uptake.
- (d) Lead salts.
- (e) Potassium chloride—unless derived from a mined source and applied in a manner that minimizes chloride accumulation in the soil.
- (f) Sodium fluoaluminate (mined).
- (g) 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.
- (h) Strychnine.
- (i) Tobacco dust (nicotine sulfate).

**205.603 Synthetic substances allowed for use in organic livestock production.**

In accordance with restrictions specified in this section the following synthetic substances may be used in organic livestock production:

- (a) As disinfectants, sanitizer, and medical treatments as applicable.
  - (1) Alcohols.
    - (i) Ethanol—disinfectant and sanitizer only, prohibited as a feed additive.
    - (ii) Isopropanol—disinfectant only.
  - (2) Aspirin—approved for health care use to reduce inflammation.
  - (3) Biologics—Vaccines.
  - (4) Chlorhexidine—Allowed for surgical procedures conducted by a veterinarian. Allowed for use as a teat dip when alternative germicidal agents and/or physical barriers have lost their effectiveness.
  - (5) Chlorine materials—disinfecting and sanitizing facilities and equipment. Residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act.
    - (i) Calcium hypochlorite.
    - (ii) Chlorine dioxide.
    - (iii) Sodium hypochlorite.
  - (6) Electrolytes—without antibiotics.
  - (7) Glucose.
  - (8) Glycerine—Allowed as a livestock teat dip, must be produced through the hydrolysis of fats or oils.
  - (9) Hydrogen peroxide.
  - (10) Iodine.
  - (11) Magnesium sulfate.
  - (12) Oxytocin—use in postparturition therapeutic applications.

(13) Parasiticides. Ivermectin—prohibited in slaughter stock, allowed in emergency treatment for dairy and breeder stock when organic system plan-approved preventive management does not prevent infestation. Milk or milk products from a treated animal cannot be labeled as provided for in subpart D of this part for 90 days following treatment. In breeder stock, treatment cannot occur during the last third of gestation if the progeny will be sold as organic and must not be used during the lactation period of breeding stock.

(14) Phosphoric acid—allowed as an equipment cleaner, *Provided*, That, no direct contact with organically managed livestock or land occurs.

(b) As topical treatment, external parasiticide or local anesthetic as applicable.

(1) Copper sulfate.

(2) Iodine.

(3) Lidocaine—as a local anesthetic. Use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals.

(4) Lime, hydrated—as external pest control, not permitted to cauterize physical alterations or deodorize animal wastes.

(5) Mineral oil—for topical use and as a lubricant.

(6) Procaine—as a local anesthetic, use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals.

(c) As feed supplements—Milk replacers without antibiotics, as emergency use only, no nonmilk products or products from BST treated animals.

(d) As feed additives.

(1) DL-Methionine, DL-Methionine-hydroxyl analog, and DL-Methionine-hydroxyl analog calcium (CAS #—59–51–8; 63–68–3; 348–67–4)—for use in organic poultry production until October 1, 2008.

(2) Trace minerals, used for enrichment or fortification when FDA approved.

(3) Vitamins, used for enrichment or fortification when FDA approved.

(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.

#### **205.604 Nonsynthetic substances prohibited for use in organic livestock production.**

The following nonsynthetic substances may not be used in organic livestock production:

(a) Strychnine.

#### **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:*

Acids (Alginic; Citric—produced by microbial fermentation of carbohydrate substances; and Lactic).

Agar-agar.

Animal enzymes—(Rennet—animals derived; Catalase—bovine liver; Animal lipase; Pancreatin; Pepsin; and Trypsin).

Bentonite.

Calcium carbonate.

Calcium chloride.

Calcium sulfate—mined.

Carageenan.

Colors, nonsynthetic sources only.

Dairy cultures.

Diatomaceous earth—food filtering aid only.

Egg white lysozyme (CAS # 9001–63–2)

Enzymes—must be derived from edible, nontoxic plants, nonpathogenic fungi, or nonpathogenic bacteria.

USDA National Organic Program Rule Summary

Flavors, nonsynthetic sources only and must not be produced using synthetic solvents and carrier systems or any artificial preservative.

Glucono delta-lactone—production by the oxidation of D-glucose with bromine water is prohibited.

Kaolin.

L-Malic acid (CAS # 97-67-6).

Magnesium sulfate, nonsynthetic sources only.

Microorganisms—any food grade bacteria, fungi, and other microorganism.

Nitrogen—oil-free grades.

Oxygen—oil-free grades.

Perlite—for use only as a filter aid in food processing.

Potassium chloride.

Potassium iodide.

Sodium bicarbonate.

Sodium carbonate.

Tartaric acid.

Waxes—nonsynthetic (Carnauba wax; and Wood resin).

Yeast—nonsynthetic, growth on petrochemical substrate and sulfite waste liquor is prohibited (Autolysate; Bakers; Brewers; Nutritional; and Smoked—nonsynthetic smoke flavoring process must be documented).

(b) *Synthetics allowed:*

Activated charcoal (CAS #s 7440-44-0; 64365-11-3)—only from vegetative sources; for use only as a filtering aid.

Alginates.

Ammonium bicarbonate—for use only as a leavening agent.

Ammonium carbonate—for use only as a leavening agent.

Ascorbic acid.

Calcium citrate.

Calcium hydroxide.

Calcium phosphates (monobasic, dibasic, and tribasic).

Carbon dioxide.

Cellulose—for use in regenerative casings, as an anti-caking agent (non-chlorine bleached) and filtering aid.

Chlorine materials—disinfecting and sanitizing food contact surfaces, *Except*, That, residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act (Calcium hypochlorite; Chlorine dioxide; and Sodium hypochlorite).

Cyclohexylamine (CAS # 108-91-8)—for use only as a boiler water additive for packaging sterilization.

Diethylaminoethanol (CAS # 100-37-8)—for use only as a boiler water additive for packaging sterilization.

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

Ferrous sulfate—for iron enrichment or fortification of foods when required by regulation or recommended (independent organization).

Glycerides (mono and di)—for use only in drum drying of food.

Glycerin—produced by hydrolysis of fats and oils.

Hydrogen peroxide.

Lecithin—bleached.

Magnesium carbonate—for use only in agricultural products labeled “made with organic (specified ingredients or food group(s)),” prohibited in agricultural products labeled “organic”.

Magnesium chloride—derived from sea water.

Magnesium stearate—for use only in agricultural products labeled “made with organic (specified ingredients or food group(s)),” prohibited in agricultural products labeled “organic”.

Nutrient vitamins and minerals, in accordance with 21 CFR 104.20, Nutritional Quality Guidelines For Foods.

Octadecylamine (CAS # 124-30-1)—for use only as a boiler water additive for packaging sterilization.

Ozone.

Pectin (low-methoxy).



Peracetic acid/Peroxyacetic acid (CAS # 79-21-0)—for use in wash and/or rinse water according to FDA limitations. For use as a sanitizer on food contact surfaces.

Phosphoric acid—cleaning of food-contact surfaces and equipment only.

Potassium acid tartrate.

Potassium tartrate made from tartaric acid.

Potassium carbonate.

Potassium citrate.

Potassium hydroxide—prohibited for use in lye peeling of fruits and vegetables except when used for peeling peaches during the Individually Quick Frozen (IQF) production process.

Potassium iodide—for use only in agricultural products labeled “made with organic (specified ingredients or food group(s)),” prohibited in agricultural products labeled “organic”.

Potassium phosphate—for use only in agricultural products labeled “made with organic (specific ingredients or food group(s)),” prohibited in agricultural products labeled “organic”.

Silicon dioxide.

Sodium acid pyrophosphate (CAS # 7758-16-9)—for use only as a leavening agent.

Sodium citrate.

Sodium hydroxide—prohibited for use in lye peeling of fruits and vegetables.

Sodium phosphates—for use only in dairy foods.

Sulfur dioxide—for use only in wine labeled “made with organic grapes,” Provided, That, total sulfite concentration does not exceed 100 ppm.

Tartaric acid.

Tetrasodium pyrophosphate (CAS # 7722-88-5)—for use only in meat analog products.

Tocopherols—derived from vegetable oil when rosemary extracts are not a suitable alternative.

Xanthan gum.

**§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)).”**

Only 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, and only when the product is not commercially available in organic form.

- (a) Cornstarch (native)
- (b) Gums—water extracted only (arabic, guar, locust bean, carob bean)
- (c) Kelp—for use only as a thickener and dietary supplement
- (d) Lecithin—unbleached
- (e) Pectin (high-methoxy)

**205.607 Amending the National List.**

This section states that any person may petition the National Organic Standards Board to add materials to or remove materials from the National List.

**State Organic Programs**

**The NOP provides four options for States.**

1. A state may be a state certifying agent.
2. A state may have a State Organic Program, which has authority to enforce the NOP in the state.
3. A state may be a state certifying agent and have a State Organic Program.
4. A state may choose to not have a State Organic Program or be a state certifying agent.

**205.620 Requirements of State Organic Programs.**

1. Specifies that any State may establish a State Organic Program .
2. Specifies that State Organic Programs must meet the NOP requirements.
3. Allows a State to have more restrictive requirements because of environmental conditions or specific production or handling practices.
4. Requires a State Organic Program to assume enforcement obligations of the NOP.
5. Requires a State Organic Program to be approved by the USDA Secretary prior to implementing its

state program.

**205.621 Submission and determination of proposed State Organic Programs and amendments to approved State Organic Programs.**

This section includes the details of the information that must be submitted by a State in order for a State Organic Program to be approved under the NOP.

**205.622 Review of approved State Organic Programs.**

Specifies that NOP must review State Organic Programs at least once every five years.

**Fees**

**Sections 205.640 and 205.641 205.642**

These sections specify the costs for accreditation.

**205.642 Fees and other charges for certification.**

1. Certifiers are required to charge reasonable fees for the certification services they provide.
2. Certifiers are required to publish their fee schedules and provide justification for any nonrefundable fees that are charged.

**Compliance**

The NOP compliance proceedings are similar to administrative procedures of many states.

**205.660 General**

This section specifies that the NOP may conduct inspections or initiate revocation proceedings against a certified operation or a certifying agent's accreditation.

**205.661 Investigation of certified operations.**

Allows certifying agents and State Organic Programs to investigate complaints of noncompliance with the NOP regulations.

**205.662 Noncompliance procedure for certified operations.**

Specifies the procedures that certifiers and State Organic Programs must take for any compliance action. The procedures provide due process for certified operations. The procedures outline notification procedures, resolution options, proposed suspension or revocation notices, and procedures for willful violations.

**205.663 Mediation.**

This section specifies the procedures for a mediated settlement of noncompliance proceedings. Mediation is not mandated but offered as an option for settlement of a noncompliance proceeding.

**205.665 Noncompliance procedure for certifying agents and 205.668 Noncompliance procedures under State Organic Programs.**

These sections specify the procedures for noncompliance proceedings against certifying agents and State Organic Programs respectively.

**205.670 Inspection and testing of agricultural product to be sold or labeled "organic."**

1. Organic food products must be available for sampling for pesticide residues.
2. State Organic Programs or certifying agents may require preharvest or postharvest testing when there is reason to believe that the product has come into contact with a prohibited substance or has been produced using genetically modified ingredients.
3. Sampling may only be conducted when there is reason to believe that there may be residues present. This may require the SOP's and state certification agencies to only sample producers where there is a risk of pesticide drift, residual soil contamination, or misapplication of prohibited substances. It needs to be demonstrated that there is a reason to believe that the product may have come into contact with prohibited substances.
4. Sampling must be done by qualified inspectors and must maintain chain of custody.

5. Chemical analysis must be done by official methods of analysis.
6. Results of all analyses must be provided to the National Organic Program and must be available for public access.
7. Residue tests are conducted at the expense of the certifying agent.

**205.671 Exclusion from organic sale.**

1. The NOP establishes an organic tolerance level at 5% of the Environmental Protection Agency's tolerance levels for registered pesticides.
2. The NOP establishes the FDA action level as the organic tolerance level for pesticides that are no longer registered (e.g. DDT, dieldrin, chlordane).
3. When residues are detected that exceed these levels, the products must not be sold, labeled or represented as organic.

**205.672 Emergency pest or disease treatment.**

1. Allows a prohibited substance to be applied to a certified organic operation as part of a Federal or State emergency pest or disease control program.
2. Prohibits any crop or product that has come into contact with a prohibited substance to be labeled, represented or sold as organic.
3. This section protects consumers by prohibiting any organic crops from having prohibited substances applied to them while also protecting the organic producer from losing their organic certification due to an emergency pest control program outside of their control.

**Adverse Action Appeal Process**

**§205.680 General and §205.681 Appeals.**

This section describes the appeals process for person's that believe that they are adversely affected by a noncompliance decision of the National Organic Program, a State organic program, or a certifying agent. The primary difference between the NOP appeal process and the current state process is that appeals would be appealed to a U.S. District Court rather than a State court.