

**ORGANIC FOOD FEDERATION**

**NOP STANDARDS**



**BOOK 8**

**PRODUCTION**

# OFF – ORGANIC PRODUCTS FOR EXPORT TO USA

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For the convenience of OFF Registrants intending to export their produce/products to the USA, the National Organic Program (NOP) Standards of the United States Department of Agriculture (USDA) have been split into

Book 7 – NOP Standards – General

Book 8 – Agriculture

Book 9 – Processed Products (books 1-6 are UK Standards)

All paragraphs and footnotes in italics have been added by the Organic Food Federation for the guidance of UK producers and processors guidance only

## **Subpart C - Organic Production and Handling Requirements**

### **§ 205.200 General.**

The producer or handler of a production or handling operation intending to sell, label, or represent agricultural products as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must comply with the applicable provisions of this subpart. Production practices implemented in accordance with this subpart must maintain or improve the natural resources of the operation, including soil and water quality.

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

(a) The producer or handler of a production or handling operation, except as exempt or excluded under § 205.101, intending to sell, label, or represent agricultural products as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent. An organic system plan must meet the requirements set forth in this section for organic production or handling. An organic production or handling system plan must include:

- (1) A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed; A conversion plan needs to be completed by the first inspection covering rotation and general farm management, also a livestock health plan for any animals on the farm. Inputs need to be justified at time of inspection through soil, leaf or forage analysis or nutrient budgets.
- (2) A list of each substance to be used as a production or handling input, indicating its composition, source, location(s) where it will be used, and documentation of commercial availability, as applicable;
- (3) A description of the monitoring practices and procedures to be performed and maintained, including the frequency with which they will be performed, to verify that the plan is effectively implemented;
- (4) A description of the record keeping system implemented to comply with the requirements established in § 205.103; Record keeping is checked at first inspection but must include field records and veterinary medicine books
- (5) A description of the management practices and physical barriers established to prevent commingling of organic and non-organic products on a split operation and to

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prevent contact of organic production and handling operations and products with prohibited substances; and

(6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations.

(b) A producer may substitute a plan prepared to meet the requirements of another Federal, State, or local government regulatory program for the organic system plan: Provided, That, the submitted plan meets all the requirements of this subpart.

### § 205.202 Land requirements.

Any field or farm parcel from which harvested crops are intended to be sold, labelled, or represented as "organic," must:

(a) Have been managed in accordance with the provisions of §§ 205.203 through 205.206;

(b) Have had no prohibited substances, as listed in § 205.105, applied to it for a period of 3 years immediately preceding harvest of the crop; This differs from the EU where a two year conversion period is required for land with annual crops and then the seed for the first organic crop must be put into organic land so technically three years or at least three crops. There is a three year conversion period for perennials.

and

(c) Have distinct, defined boundaries and buffer zones such as runoff diversions to prevent the unintended application of a prohibited substance to the crop or contact with a prohibited substance applied to adjoining land that is not under organic management. In the UK an organic field next to a non-organic field must have a 10 meter boundary (headland) on it.

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

(a) The producer must select and implement tillage and cultivation practices that maintain or improve the physical, chemical, and biological condition of soil and minimize soil erosion.

(b) The producer must manage crop nutrients and soil fertility through rotations, cover crops, and the application of plant and animal materials.

(c) The producer must manage 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, pathogenic organisms, heavy metals, or residues of prohibited substances. Animal and plant materials include:

(1) Raw animal manure, which must be composted unless it is:

(i) Applied to land used for a crop not intended for human consumption;

(ii) Incorporated into the soil not less than 120 days prior to the harvest of a product whose edible portion has direct contact with the soil surface or soil particles; or

(iii) Incorporated into the soil not less than 90 days prior to the harvest of a product whose edible portion does not have direct contact with the soil surface or soil particles;

The EU restriction for the use of raw manure is with regard to amount of nitrogen put on (170kg/ha) rather than date of application. Also the use of non-organic manure has to be justified and from a non-intensive system.

(2) Composted plant and animal materials produced through a process that

(i) established an initial C:N ratio of between 25:1 and 40:1; and

(ii) maintained a temperature of between 131°F and 170°F for 3 days using an in-vessel or static aerated pile system; or

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(iii) maintained a temperature of between 131°F and 170°F for 15 days using a windrow composting system, during which period, the materials must be turned a minimum of five times. In the UK there are no restrictions on compost times and temperatures.

(3) Un-composted plant materials.

(d) A producer may manage crop nutrients and soil fertility 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, pathogenic organisms, heavy metals, or residues of prohibited substances by applying:

(1) A crop nutrient or soil amendment included on the National List of synthetic substances allowed for use in organic crop production;

(2) A mined substance of low solubility; list of what is allowed in the EU is given on pages 9 and 10 of OFF Book 1 (Arable Standards).

(3) A mined substance of high solubility, Provided, That, the substance is used in compliance with the conditions established on the National List of non-synthetic materials prohibited for crop production; list of what is allowed in the EU is given on pages 9 and 10 of OFF Book 1 (Arable Standards).

(4) Ash obtained from the burning of a plant or animal material, except as prohibited in paragraph (e) of this section: Provided, That, the material burned has not been treated or combined with a prohibited substance or the ash is not included on the National List of non-synthetic substances prohibited for use in organic crop production; EU allows wood ash and ash from straw burners.

and

(5) A plant or animal material that has been chemically altered by a manufacturing process: Provided, That, the material is included on the National List of synthetic substances allowed for use in organic crop production established in § 205.601. List of plant and animal materials which are allowed to be used page 8-9 of OFF Book 1(Arable Standards)

(e) The producer must not use:

(1) Any fertilizer or composted plant and animal material that contains a synthetic substance not included on the National List of synthetic substances allowed for use in organic crop production;

(2) Sewage sludge (biosolids) as defined in 40 CFR Part 503; and

(3) Burning as a means of disposal for crop residues produced on the operation: Except, That, burning may be used to suppress the spread of disease or to stimulate seed germination.

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

(a) The producer must use organically grown seeds, annual seedlings, and planting stock: Except, That,

(1) Non-organically produced, untreated seeds and planting stock may be used to produce an organic crop when an equivalent organically produced variety is not commercially available, Except, That, organically produced seed must be used for the production of edible sprouts;

(2) Non-organically produced seeds and planting stock that have been treated with a substance included on the National List of synthetic substances allowed for use in organic crop production may be used to produce an organic crop when an equivalent organically produced or untreated variety is not commercially available;

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(3) Non-organically produced annual seedlings may be used to produce an organic crop when a temporary variance has been granted in accordance with § 205.290(a)(2);

(4) Non-organically produced planting stock to be used to produce a perennial crop may be sold, labelled, or represented as organically produced only after the planting stock has been maintained under a system of organic management for a period of no less than 1 year; and

(5) Seeds, annual seedlings, and planting stock treated with prohibited substances may be used to produce an organic crop when the application of the materials is a requirement of Federal or State phyto-sanitary regulations.

### **§ 205.205 Crop rotation practice standard.**

The producer must implement a crop rotation including but not limited to sod (pasture or temporary leys), cover crops, green manure crops, and catch crops that provide the following functions that are applicable to the operation:

- (a) Maintain or improve soil organic matter content;
- (b) Provide for pest management in annual and perennial crops;
- (c) Manage deficient or excess plant nutrients; and
- (d) Provide erosion control.

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

(a) The producer must use management practices to prevent crop pests, weeds, and diseases including but not limited to:

(1) Crop rotation and soil and crop nutrient management practices, as provided for in §§ 205.203 and 205.205;

(2) Sanitation measures to remove disease vectors, weed seeds, and habitat for pest organisms; and

(3) Cultural practices that enhance crop health, including selection of plant species and varieties with regard to suitability to site-specific conditions and resistance to prevalent pests, weeds, and diseases.

(b) Pest problems may be controlled through mechanical or physical methods including but not limited to:

(1) Augmentation or introduction of predators or parasites of the pest species;

(2) Development of habitat for natural enemies of pests;

(3) Non-synthetic controls such as lures, traps, and repellents. EU list is shown on pages 10-12 of OFF Book 1(Arable Standards)

(c) Weed problems may be controlled through:

(1) Mulching with fully biodegradable materials;

(2) Mowing;

(3) Livestock grazing;

(4) Hand weeding and mechanical cultivation;

(5) Flame, heat, or electrical means; or

(6) Plastic or other synthetic mulches: Provided, That, they are removed from the field at the end of the growing or harvest season.

(d) Disease problems may be controlled through:

(1) Management practices which suppress the spread of disease organisms; or

(2) Application of non-synthetic biological, botanical, or mineral inputs. – EU list on page 10-12 of the arable standards.

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(e) When the practices provided for in paragraphs (a) through (d) of this section are insufficient to prevent or control crop pests, weeds, and diseases, a biological or botanical substance or a substance included on the National List of synthetic substances allowed for use in organic crop production may be applied to prevent, suppress, or control pests, weeds, or diseases: Provided, That, the conditions for using the substance are documented in the organic system plan.

(f) The producer must not use lumber treated with arsenate or other prohibited materials for new installations or replacement purposes in contact with soil or livestock.

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

(a) A wild crop that is intended to be sold, labelled, or represented as organic must be harvested from a designated area that has had no prohibited substance, as set forth in § 205.105, applied to it for a period of 3 years immediately preceding the harvest of the wild crop.

(b) A wild crop must be harvested in a manner that ensures that such harvesting or gathering will not be destructive to the environment and will sustain the growth and production of the wild crop.

### § 205.236 Origin of livestock.

(a) Livestock products that are to be sold, labelled, or represented as organic must be from livestock under continuous organic management from the last third of gestation or hatching: Except, That, (1) Poultry. Poultry or edible poultry products must be from poultry that has been under continuous organic management beginning no later than the second day of life;- EU standards are species specific. Beef cattle have to be managed organically at least 12 weeks before birth. Sheep and pigs from mating onwards, pullets for can be raised non - organically up to 18 weeks old and less than three days old for table birds.

(2) Dairy animals. Milk or milk products must be from animals that have been under continuous organic management beginning no later than 1 year prior to the production of the milk or milk products that are to be sold, labelled, or represented as organic, Except, That, when an entire, distinct herd is converted to organic production, the producer may: - EU Dairy cattle must be under organic health management for 9 months and organic feeding for 3 months (changing to 6 months after August 2003).

(i) For the first 9 months of the year, provide a minimum of 80-percent feed that is either organic or raised from land included in the organic system plan and managed in compliance with organic crop requirements; and – EU see above

(ii) provide feed in compliance with § 205.237 for the final 3 months.

(iii) Once an entire, distinct herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation.- EU Cattle must be managed organically from conversion onwards

(3) Breeder stock. Livestock used as breeder stock may be brought from a non-organic operation onto an organic operation at any time: Provided, That, if such livestock are gestating and the offspring are to be raised as organic livestock, the breeder stock must be brought onto the facility no later than the last third of gestation. – Livestock brought in that are non- organic must be nulliparous no more than 10 % of the herd or 20% for sheep. The exceptions are for small herds of less

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than 10 bovine or 5 porcine, ovine or caprine where only one animal can be brought on.

(b) The following are prohibited:

(1) Livestock or edible livestock products that are removed from an organic operation and subsequently managed on a non-organic operation may be not sold, labelled, or represented as organically produced.

(2) Breeder or dairy stock that has not been under continuous organic management since the last third of gestation may not be sold, labelled, or represented as organic slaughter stock.

(c) The producer of an organic livestock operation must maintain records sufficient to preserve the identity of all organically managed animals and edible and non-edible animal products produced on the operation.

### § 205.237 Livestock feed.

(a) The producer of an organic livestock operation must provide livestock with a total feed ration composed of agricultural products, including pasture and forage, that are organically produced and, if applicable, organically handled: Except, That, non-synthetic substances and synthetic substances allowed under § 205.603 may be used as feed additives and supplements. – EU 10% non-organic feed allowed to be fed (20% for chickens) and 30% in conversion if it is from off the farm and 60% if it is from the farm. Also diet for ruminants must be 60% forage and diet for poultry must be 60% cereals.

(b) The producer of an organic operation must not:

(1) Use animal drugs, including hormones, to promote growth;

(2) Provide feed supplements or additives in amounts above those needed for adequate nutrition and health maintenance for the species at its specific stage of life;

(3) Feed plastic pellets for roughage;

(4) Feed formulas containing urea or manure;

(5) Feed mammalian or poultry slaughter by-products to mammals or poultry; or

(6) Use feed, feed additives, and feed supplements in violation of the Federal Food, Drug, and Cosmetic Act.

### § 205.238 Livestock health care practice standard.

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

(1) Selection of species and types of livestock with regard to suitability for site-specific conditions and resistance to prevalent diseases and parasites;

(2) Provision of a feed ration sufficient to meet nutritional requirements, including vitamins, minerals, protein and/or amino acids, fatty acids, energy sources, and fibre (ruminants);

(3) Establishment of appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites; - EU area per animal is specified and is species related

(4) Provision of conditions which allow for exercise, freedom of movement, and reduction of stress appropriate to the species; -EU stocking density either dictated (as for poultry) or linked to N per ha (no more than 170Kg N/ Ha/Yr.

(5) Performance of physical alterations as needed to promote the animal's welfare and in a manner that minimizes pain and stress; and

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(6) Administration of vaccines and other veterinary biologics – Vaccines must be justified and used to the minimum of coverage..

(b) When preventive practices and veterinary biologics are inadequate to prevent sickness, a producer may administer synthetic medications: Provided, that, such medications are allowed under § 205.603. Parasiticides allowed under § 205.603 may be used on

(1) Breeder stock, when used prior to the last third of gestation but not during lactation for progeny that are to be sold, labelled, or represented as organically produced; and

(2) Dairy stock, when used a minimum of 90 days prior to the production of milk or milk products that are to be sold, labelled, or represented as organic. EU wormers can be used as required with justification but the withdrawal period is doubled

(c) The producer of an organic livestock operation must not:

1) Sell, label, or represent as organic any animal or edible product derived from any animal treated with antibiotics, any substance that contains a synthetic substance not allowed under § 205.603, or any substance that contains a non-synthetic substance prohibited in § 205.604.-

(2) Administer any animal drug, other than vaccinations, in the absence of illness;

(3) Administer hormones for growth promotion;

(4) Administer synthetic parasiticides on a routine basis;

(5) Administer synthetic parasiticides to slaughter stock;

(6) Administer animal drugs in violation of the Federal Food, Drug, and Cosmetic Act; or

(7) Withhold medical treatment from a sick animal in an effort to preserve its organic status. All appropriate medications must be used to restore an animal to health when methods acceptable to organic production fail. Livestock treated with a prohibited substance must be clearly identified and shall not be sold, labelled, or represented as organically produced. In the EU, antibiotics are allowed to be used for veterinary purposes but if an animal has three treatments in one year (or its lifetime whichever is the shorter, then it is not allowed to retain its organic status.)

### § 205.239 Livestock living conditions.

(a) The producer of an organic livestock operation must establish and maintain livestock living conditions which accommodate the health and natural behavior of animals, including:

(1) Access to the outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight suitable to the species, its stage of production, the climate, and the environment;

(2) Access to pasture for ruminants;

(3) Appropriate clean, dry bedding. If the bedding is typically consumed by the animal species, it must comply with the feed requirements of § 205.237;

(4) Shelter designed to allow for:

(i) Natural maintenance, comfort behaviours, and opportunity to exercise;

(ii) Temperature level, ventilation, and air circulation suitable to the species; and

(iii) Reduction of potential for livestock injury;

UK has species specific stocking densities.

(b) The producer of an organic livestock operation may provide temporary confinement for an animal because of:

(1) Inclement weather;

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(2) The animal's stage of production; - UK regulations allow housing if weather or lambing/calving makes it necessary. Fattening pigs and poultry are allowed in for specific periods of their life.

(3) Conditions under which the health, safety, or well being of the animal could be jeopardized; or

(4) Risk to soil or water quality.

(c) The producer of an organic livestock operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms and optimises recycling of nutrients.

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

(a) Mechanical or biological methods, including but not limited to 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 may be used to process an organically produced agricultural product for the purpose of retarding spoilage or otherwise preparing the agricultural product for market.

(b) Non-agricultural substances allowed under § 205.605 and non-organically produced agricultural products allowed under § 205.606 may be used:

(1) In or on a processed agricultural product intended to be sold, labelled, or represented as "organic," pursuant to § 205.301(b), if not commercially available in organic form.

(2) In or on a processed agricultural product intended to be sold, labelled, or represented as "made with organic (specified ingredients or food group(s))," pursuant to § 205.301(c).

(c) The handler of an organic handling operation must not use in or on agricultural products intended to be sold, labelled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))," or in or on any ingredients labelled as organic:

(1) Practices prohibited under paragraphs (e) and (f) of § 205.105.

(2) A volatile synthetic solvent or other synthetic processing aid not allowed under § 205.605, Except, That, non-organic ingredients in products labelled "made with organic (specified ingredients or food group(s))" are not subject to this requirement.

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

(a) The producer or handler of an organic facility must use management practices to prevent pests, including but not limited to:

(1) Removal of pest habitat, food sources, and breeding areas;

(2) Prevention of access to handling facilities; and

(3) Management of environmental factors, such as temperature, light, humidity, atmosphere, and air circulation, to prevent pest reproduction.

(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 non-synthetic or synthetic substances consistent with the National List.

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- (c) If the practices provided for in paragraphs (a) and (b) of this section are not effective to prevent or control pests, a non-synthetic or synthetic substance consistent with the National List may be applied.
- (d) If the practices provided for in paragraphs (a), (b), and (c) of this section are not effective to prevent or control facility pests, a synthetic substance not on the National List may be applied, Provided, That, the handler and certifying agent agree on the substance, method of application, and measures to be taken to prevent contact of the organically produced products or ingredients with the substance used. – In the UK any product is allowed as long as it is allowed to be used under UK law.
- (e) The handler of an organic handling operation who applies a non-synthetic or synthetic substance to prevent or control pests must update the operation's organic handling plan to reflect the use of such substances and methods of application. The updated organic plan must include a list of all measures taken to prevent contact of the organically produced products or ingredients with the substance used. – Just a plan of the bait points required to be kept.
- (f) Notwithstanding the practices provided for in paragraphs (a), (b), (c), and (d) of this section, a handler may otherwise use substances to prevent or control pests as required by Federal, State, or local laws and regulations, Provided, That, measures are taken to prevent contact of the organically produced products or ingredients with the substance used.

### **§ 205.272 Co-mingling and contact with prohibited substance prevention practice standard.**

- (a) The handler of an organic handling operation must implement measures necessary to prevent the co-mingling of organic and non-organic products and protect organic products from contact with prohibited substances.
- (b) The following are prohibited for use in the handling of any organically produced agricultural product or ingredient labelled in accordance with subpart D of this part:
- (1) Packaging materials, and storage containers, or bins that contain a synthetic fungicide, preservative, or fumigant;
  - (2) The use or reuse of any bag or container that has been in contact with any substance in such a manner as to compromise the organic integrity of any organically produced product or ingredient placed in those containers, unless such reusable bag or container has been thoroughly cleaned and poses no risk of contact of the organically produced product or ingredient with the substance used.

### **§§ 205.273 - 205.289 [Reserved]**

### **§ 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.
- (b) A State organic program's governing State official or certifying agent may recommend in writing to the Administrator that a temporary variance from a standard

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set forth in subpart C of this part for organic production or handling operations be established: Provided, That, such variance is based on one or more of the reasons listed in paragraph (a) of this section.

(c) The Administrator will provide written notification to certifying agents upon establishment of a temporary variance applicable to the certifying agent's certified production or handling operations and specify the period of time it shall remain in effect, subject to extension as the Administrator deems necessary.

(d) A certifying agent, upon notification from the Administrator of the establishment of a temporary variance, must notify each production or handling operation it certifies to which the temporary variance applies.

(e) Temporary variances will not be granted for any practice, material, or procedure prohibited under § 205.105.

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

#### **§ 205.300 Use of the term, "organic."**

(a) The term, "organic," may only be used on labels and in labelling of raw or processed agricultural products, including ingredients, that have been produced and handled in accordance with the regulations in this part. The term, "organic," may not be used in a product name to modify a non-organic ingredient in the product.

(b) Products for export, produced and certified to foreign national organic standards or foreign contract buyer requirements, may be labelled in accordance with the organic labelling requirements of the receiving country or contract buyer: Provided, That, the shipping containers and shipping documents meet the labelling requirements specified in § 205.307(c).

(c) Products produced in a foreign country and exported for sale in the United States must be certified pursuant to subpart E of this part and labelled pursuant to this subpart D.

(d) Livestock feeds produced in accordance with the requirements of this part must be labelled in accordance with the requirements of § 205.306.

#### **§ 205.301 Product composition.**

(a) Products sold, labelled, or represented as "100 percent organic." A raw or processed agricultural product sold, labelled, or represented as "100 percent organic" must contain (by weight or fluid volume, excluding water and salt)\* 100 percent organically produced ingredients. If labelled as organically produced, such product must be labelled pursuant to § 205.303. \*(In the EU the organic content is expressed as the percentage of agriculturally derived materials)

(b) Products sold, labelled, or represented as "organic." A raw or processed agricultural product sold, labelled, or represented as "organic" must contain (by weight or fluid volume, excluding water and salt)\* not less than 95 percent organically produced raw or processed agricultural products. Any remaining product ingredients must be organically produced, unless not commercially available in organic form, or must be non-agricultural substances or non-organically produced agricultural products produced consistent with the National List in subpart G of this part. If labelled as organically produced, such product must be labelled pursuant to § 205.303. \*(In the EU the organic content is expressed as the percentage of agriculturally derived materials)

These standards have been extracted from the National Organic Program Standards of the United States Department of Agriculture for the convenience of UK companies intending to export organic products to the USA. The paragraph numbers are the same as used in the full NOP standards which are available on request from the Organic Food Federation.

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(c) Products sold, labelled, or represented as "made with organic (specified ingredients or food group(s))." Multi-ingredient agricultural product sold, labelled, or represented as "made with organic (specified ingredients or food group(s))" must contain (by weight or fluid volume, excluding water and salt)\* at least 70 percent organically produced ingredients which are produced and handled pursuant to requirements in subpart C of this part. No ingredients may be produced using prohibited practices specified in paragraphs (1), (2), and (3) of § 205.301(f). Non-organic ingredients may be produced without regard to paragraphs (4), (5), (6), and (7) of § 205.301(f). If labelled as containing organically produced ingredients or food groups, such product must be labelled pursuant to § 205.304. \*(In the EU the organic content is expressed as the percentage of agriculturally derived materials)

(d) Products with less than 70 percent organically produced ingredients. The organic ingredients in multi-ingredient agricultural product containing less than 70 percent organically produced ingredients (by weight or fluid volume, excluding water and salt) must be produced and handled pursuant to requirements in subpart C of this part. The non-organic ingredients may be produced and handled without regard to the requirements of this part. Multi-ingredient agricultural product containing less than 70 percent organically produced ingredients may represent the organic nature of the product only as provided in § 205.305.

(e) Livestock feed:

(1) A raw or processed livestock feed product sold, labelled, or represented as "100 percent organic" must contain (by weight or fluid volume, excluding water and salt) not less than 100 percent organically produced raw or processed agricultural product. – In the UK feed is allowed to contain non- organic and in conversion feed and only be a percentage organic as long as the products used are those allowed in the organic standards.

(2) A raw or processed livestock feed product sold, labelled, or represented, as "organic" must be produced in conformance with § 205.237.-In the UK the feed must be labels with the percentage organic content.

(f) All products labelled as "100 percent organic" or "organic" and all ingredients identified as "organic" in the ingredient statement of any product must not:

- (1) Be produced using excluded methods, pursuant to § 201.105(e);
- (2) Be produced using sewage sludge, pursuant to § 201.105(f);
- (3) Be processed using ionizing radiation, pursuant to § 201.105(g);
- (4) Be processed using processing aids not approved on the National List of Allowed and Prohibited Substances in subpart G of this part: Except, That, products labelled as "100 percent organic," if processed, must be processed using organically produced processing aids;
- (5) Contain sulfites, nitrates, or nitrites added during the production or handling process, Except, That, wine containing added sulfites may be labelled "made with organic grapes";
- (6) Be produced using non-organic ingredients when organic ingredients are available; or
- (7) Include organic and non-organic forms of the same ingredient.

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

(a) The percentage of all organically produced ingredients in an agricultural product sold, labelled, 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:

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(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. \*(In the EU the organic content is expressed as the percentage of agriculturally derived materials)

(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.

(b) The percentage of all organically produced ingredients in an agricultural product must be rounded down to the nearest whole number.

(c) The percentage must be determined by the handler who affixes the label on the consumer package and verified by the certifying agent of the handler. The handler may use information provided by the certified operation in determining the percentage.

Labelling of Packaged products - see Book 9 §205-303 through to §205-305 and §205-307

### **§ 205.306 Labelling of livestock feed.**

(a) Livestock feed products described in § 205.301(e)(1) and (e)(2) may display on any package panel the following terms:

(1) The statement, "100 percent organic" or "organic," as applicable, to modify the name of the feed product;

(2) The USDA seal;

(3) The seal, logo, or other identifying mark of the certifying agent which certified the production or handling operation producing the raw or processed organic ingredients used in the finished product, Provided, That, such seals or marks are not displayed more prominently than the USDA seal;

(4) The word, "organic," or an asterisk or other reference mark which is defined on the package to identify ingredients that are organically produced. Water or salt included as ingredients cannot be identified as organic.

The label must have Organic certification UK4 and the percentage organic content and in-conversion content and a list of the protein, energy, ash and vitamins and mineral content.

(b) Livestock feed products described in § 205.301(e)(1) and (e)(2) must:

(i) On the information panel, below the information identifying the handler or distributor of the product and preceded by the statement, "Certified organic by...," or similar phrase, display the name of the certifying agent that certified the handler of the finished product. The business address, Internet address, or telephone number of the certifying agent may be included in such label.

(ii) Comply with other Federal agency or State feed labelling requirements as applicable.

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### **§ 205.308 Agricultural products in other than packaged form at the point of retail sale that are sold, labelled, or represented as "100 percent organic" or "organic."**

(a) Agricultural products in other than packaged form may use the term, "100 percent organic" or "organic," as applicable, to modify the name of the product in retail display, labelling, and display containers: Provided, That, the term, "organic," is used to identify the organic ingredients listed in the ingredient statement.

(b) If the product is prepared in a certified facility, the retail display, labelling, and display containers may use:

(1) The USDA seal; and

(2) The seal, logo, or other identifying mark of the certifying agent that certified the production or handling operation producing the finished product and any other certifying agent which certified operations producing raw organic product or organic ingredients used in the finished product: Provided, That, such seals or marks are not individually displayed more prominently than the USDA seal.

### **§ 205.309 Agricultural products in other than packaged form at the point of retail sale that are sold, labelled, 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, labelling, 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."

(b) If prepared in a certified facility, such agricultural products labelled as "made with organic (specified ingredients or food group(s))" in retail displays, display containers, and market information may display the certifying agent's seal, logo, or other identifying mark.

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

(a) An agricultural product organically produced or handled on an exempt or excluded operation must not:

(1) Display the USDA seal or any certifying agent's seal or other identifying mark which represents the exempt or excluded operation as a certified organic operation, or

(2) Be represented as a certified organic product or certified organic ingredient to any buyer.

(b) An agricultural product organically produced or handled on an exempt or excluded operation may be identified as an organic product or organic ingredient in a multi-ingredient product produced by the exempt or excluded operation. Such product or ingredient must not be identified or represented as "organic" in a product processed by others.

(c) Such product is subject to requirements specified in paragraph (a) of § 205.300, and paragraphs (f)(1) through (f)(7) of § 205.301.

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### **§ 205.311 USDA Seal.**

(a) The USDA seal described in paragraphs (b) and (c) of this section may be used only for raw or processed agricultural products described in paragraphs (a), (b), (e)(1), and (e)(2) of § 205.301.

(b) The USDA seal must replicate the form and design of the example in figure 1 and must be printed legibly and conspicuously:

(1) On a white background with a brown outer circle and with the term, "USDA," in green overlaying a white upper semicircle and with the term, "organic," in white overlaying the green lower half circle; or

(2) On a white or transparent background with black outer circle and black "USDA" on a white or transparent upper half of the circle with a contrasting white or transparent "organic" on the black lower half circle.

(3) The green or black lower half circle may have four light lines running from left to right and disappearing at the point on the right horizon to resemble a cultivated field.

### **Subpart G List of Allowed and Prohibited Substances in USA**

NOTE: products intended for export to the USA may use any of the allowable ingredients or process aids described above, but only if the product concerned is EXCLUSIVELY for export to the United States.

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

The following criteria will be utilized in the evaluation of substances or ingredients for the organic production and handling sections of the National List:

(a) Synthetic and non-synthetic substances considered for inclusion on or deletion from the National List of allowed and prohibited substances will be evaluated using the criteria specified in the Act (7 U.S.C. 6517 and 6518).

(b) In addition to the criteria set forth in the Act, any synthetic substance used as a processing aid or adjuvant will be evaluated against the following criteria:

(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 and are done in a manner compatible with organic handling;

(3) The nutritional quality of the food is maintained when the substance is used, and the substance, itself, or its breakdown products do not have an adverse effect on human health as defined by applicable Federal regulations;

(4) The substance's primary use is not as a preservative or to recreate or improve flavors, colors, textures, or nutritive value lost during processing, except where the replacement of nutrients is required by law;

(5) The substance is listed as generally recognized as safe (GRAS) by Food and Drug Administration (FDA) when used in accordance with FDA's good manufacturing practices (GMP) and contains no residues of heavy metals or other contaminants in excess of tolerances set by FDA; and

(6) The substance is essential for the handling of organically produced agricultural products.

(c) Non-synthetics used in organic processing will be evaluated using the criteria specified in the Act (7 U.S.C. 6517 and 6518).

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### § 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:

(a) As algaecide, 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 – Not allowed in the UK

(ii) Chlorine dioxide– Not allowed in the UK

(iii) Sodium hypochlorite

(3) Hydrogen peroxide

(4) Soap-based algaecide/demisters – In the UK they must be K based soap and used as insecticide

(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– Not allowed in the UK

(2) Mulches

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

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

(c) As compost feedstocks

Newspapers or other recycled paper, without glossy or coloured inks

(d) As animal repellents

Soaps, ammonium - for use as a large animal repellent only, no contact with soil or edible portion of crop -In the UK they must be K based soap and used as insecticide

(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– Not allowed in the UK

(2) Boric acid - structural pest control, no direct contact with organic food or crops– Not allowed in the UK

(3) Elemental sulphur

(4) Lime sulphur - including calcium polysulphide

(5) Oils, horticultural - narrow range oils as dormant, suffocating, and summer oils.-In the UK plant oils can be used on all crops as an insecticide, acaricide, fungicide and sprout inhibitors. Mineral oils can be used until March 2002 on trees and vines

(6) Soaps, insecticidal – In the UK it must be Fatty acid potassium soap (soft soap)

(7) Sticky traps/barriers

(f) As insect attractants

Pheromones

(g) As rodenticides

(1) Sulfur dioxide - underground rodent control only (smoke bombs)

(2) Vitamin D3

- UK standards allow any rodenticide as long as it is approved for use in the UK

(h) As slug or snail bait

<None> - UK allowed Metaldehyde with a repellent for higher animal species and the permit for its use expired 31 March 2002

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### (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. – In the UK the use is restricted to 8kg/ha/yr till 2005 and then reduced to 6kg from them on.

(2) Copper sulphate - Substance must be used in a manner that minimizes accumulation of copper in the soil. – In the UK the use is restricted to 8kg/ha/yr till 2005 and then reduced to 6kg from them on.

(3) Hydrated lime - must be used in a manner that minimizes copper accumulation in the soil. – Not allowed in the UK

(4) Hydrogen peroxide – In the UK it can only be allowed to be used as a disinfectant

(5) Lime sulphur – In the UK its use is restricted to fungicide, insecticide and acaricide for winter treatments of fruit trees olive trees and vines

(6) Oils, horticultural, narrow range oils as dormant, suffocating, and summer oils. In the UK plant oils can be used on all crops as an insecticide, acaricide, fungicide and sprout inhibitors. Mineral oils can be used until March 2002 on trees and vines

(7) Potassium bicarbonate - Not allowed in the UK

(8) Elemental sulphur – Allowed to be used in the UK as a fungicide

(9) Streptomycin, for fire blight control in apples and pears only- Not allowed in the UK

(10) Tetracycline (oxytetracycline calcium complex), for fire blight control only- Not allowed in the UK

### (j) As plant or soil amendments.

(1) Aquatic plant extracts (other than hydrolysed) - Extraction process is limited to the use of potassium hydroxide or sodium hydroxide; solvent amount used is limited to that amount necessary for extraction. – In the UK seaweed only is allowed to be used either as a straight product or an extract gained by physical process (including dehydration, freezing and grinding), by extraction with water or aqueous acid and/or alkaline solution or by fermentation.

(2) Elemental sulphur

(3) Humic acids - naturally occurring deposits, water and alkali extracts only - Not allowed in the UK

(4) Lignin sulphonate - chelating agent, dust suppressant, floatation agent- Not allowed in the UK

(5) Magnesium sulphate - 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. – In the UK they have to be in the forms listed in Directive 89/530/EEC

### (i) Soluble boron products

(ii) Sulphates, carbonates, oxides, or silicates of zinc, copper, iron, manganese, molybdenum, selenium, and cobalt,

(7) Liquid fish products - can be pH adjusted with sulphuric, citric or phosphoric acid. The amount of acid used shall not exceed the minimum needed to lower the pH to 3.5 –

(8) Vitamins, B1, C, and E - Not allowed in the UK

### (k) As plant growth regulators

Ethylene - for regulation of pineapple flowering – In the UK Ethylene is only allowed to be used to de green bananas

(l) As floating agents in post-harvest handling

(1) Lignin sulphonate - Not allowed in the UK

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(2) Sodium silicate - for tree fruit and fibre processing - Not allowed in the UK  
(m) As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with non-synthetic 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

(n)-(z) [Reserved]

### **§ 205.602 Non-synthetic substances prohibited for use in organic crop production.**

The following non-synthetic substances may not be used in organic crop production:

(a) Ash from manure burning

(b) Arsenic

(c) Lead salts

(d) Sodium fluoaluminate (mined)

(e) Strychnine

(f) Tobacco dust (nicotine sulfate)

(g) Potassium chloride - unless derived from a mined source and applied in a manner that minimizes chloride accumulation in the soil.

(h) Sodium nitrate - unless use is restricted to no more than 20% of the crop's total nitrogen requirement.

(i)-(z) [Reserved]

### **§ 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 – In the UK its use must be under veterinary instruction.

(3) 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 – not allowed in the UK

(i) Calcium hypochlorite– not allowed in the UK

(ii) Chlorine dioxide– not allowed in the UK

(iii) Sodium hypochlorite

(4) Chlorohexidine - 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 – In the UK any product for teat dipping allowed conventionally is allowed

(5) Electrolytes - without antibiotics

(6) Glucose – In the UK it can be fed in the form of molasses used as a binding agent in compound feeds.

(7) Glycerine - Allowed as a livestock teat dip, must be produced through the hydrolysis of fats or oils – In the UK any teat dip allowed conventionally is allowed

(8) Iodine

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- (9) Hydrogen peroxide – In the UK it is allowed as a disinfectant
- (10) Magnesium sulphate – In the UK it is allowed for use in feed
- (11) Oxytocin - use in post-parturition therapeutic applications – Under veterinary advice
- (12) Parasiticides – In the UK internal anthelmintics are only allowed to be used with justification and not as a preventative. For external parasites products are allowed to be used as long as they are not multipurpose as in Ivermectin  
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 labelled 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.
- (13) Phosphoric acid - allowed as an equipment cleaner, Provided, That, no direct contact with organically managed livestock or land occurs. – In the UK it is allowed to be used only as a dairy equipment cleaner.
- (14) Biologics
- Vaccines – In the UK vaccines are allowed to be used only where there is a known disease risk and where there is a reduction to the lowest number of vaccines in one.
- (b) As topical treatment, external parasiticide or local anesthetic as applicable.
- (1) Iodine
- (2) Lignocaine - as a local anaesthetic. Use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals
- (3) Lime, hydrated - (bordeaux mixes), not permitted to cauterise physical alterations or deodorize animal wastes. – Not mentioned in UK standards
- (4) Mineral oil - for topical use and as a lubricant - Not mentioned in UK standards
- (5) Procaine - as a local anaesthetic, use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals
- (6) Copper sulphate – Allowed in feed only in the UK
- (c) As feed supplements
- Milk replacers - without antibiotics, as emergency use only, no non-milk products or products from BST treated animals – This can be used in the UK but will render the animal non-organic.
- (d) As feed additives
- (1) Trace minerals, used for enrichment or fortification when FDA approved, including: - The list of the forms these trace elements can be used in are listed on pages 17-18 in the OFF Livestock standards
- (i) Copper sulphate
- (ii) Magnesium sulphate
- (2) Vitamins, used for enrichment or fortification when FDA approved – Vitamins listed in the EU Directive 70/524/EEC
- (e) As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with non-synthetic 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.  
EPA List 4 - Inerts of Minimal Concern.
- (f)-(z) [Reserved]

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### **§ 205.604 Non-synthetic substances prohibited for use in organic livestock production.**

The following non-synthetic substances may not be used in organic livestock production:

- (a) Strychnine
- (b)-(z) [Reserved]

### **§ 205.661 Investigation of certified operations.**

(a) A certifying agent may investigate complaints of non-compliance with the Act or regulations of this part concerning production and handling operations certified as organic by the certifying agent. A certifying agent must notify the Program Manager of all compliance proceedings and actions taken pursuant to this part.

(b) A State organic program's governing State official may investigate complaints of non-compliance with the Act or regulations in this part concerning organic production or handling operations operating in the State.

### **§ 205.662 Non-compliance procedure for certified operations.**

(a) Notification. When an inspection, review, or investigation of a certified operation by a certifying agent or a State organic program's governing State official reveals any non-compliance with the Act or regulations in this part, a written notification of non-compliance shall be sent to the certified operation. Such notification shall provide:

- (1) A description of each non-compliance;
- (2) The facts upon which the notification of non-compliance is based; and
- (3) The date by which the certified operation must rebut or correct each non-compliance and submit supporting documentation of each such correction when correction is possible.

(b) Resolution. When a certified operation demonstrates that each non-compliance has been resolved, the certifying agent or the State organic program's governing State official, as applicable, shall send the certified operation a written notification of non-compliance resolution.

(c) Proposed suspension or revocation. When rebuttal is unsuccessful or correction of the non-compliance is not completed within the prescribed time period, the certifying agent or State organic program's governing State official shall send the certified operation a written notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the non-compliance. When correction of a non-compliance is not possible, the notification of non-compliance and the proposed suspension or revocation of certification may be combined in one notification. The notification of proposed suspension or revocation of certification shall state:

- (1) The reasons for the proposed suspension or revocation;
- (2) The proposed effective date of such suspension or revocation;
- (3) The impact of a suspension or revocation on future eligibility for certification; and
- (4) The right to request mediation pursuant to § 205.663 or to file an appeal pursuant to § 205.681.

(d) Wilful violations. Notwithstanding paragraph (a) of this section, if a certifying agent or State organic program's governing State official has reason to believe that a certified operation has wilfully violated the Act or regulations in this part, the certifying agent or State organic program's governing State official shall send the certified

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operation a notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the non-compliance.

(e) Suspension or revocation.

(1) If the certified operation fails to correct the non-compliance, to resolve the issue through rebuttal or mediation, or to file an appeal of the proposed suspension or revocation of certification, the certifying agent or State organic program's governing State official shall send the certified operation a written notification of suspension or revocation.

(2) A certifying agent or State organic program's governing State official must not send a notification of suspension or revocation to a certified operation that has requested mediation pursuant to § 205.663 or filed an appeal pursuant to § 205.681, while final resolution of either is pending.

(f) Eligibility.

(1) A certified operation whose certification has been suspended under this section may at any time, unless otherwise stated in the notification of suspension, submit a request to the Secretary for reinstatement of its certification. The request must be accompanied by evidence demonstrating correction of each non-compliance and corrective actions taken to comply with and remain in compliance with the Act and the regulations in this part.

(2) A certified operation or a person responsibly connected with an operation whose certification has been revoked will be ineligible to receive certification for a period of 5 years following the date of such revocation, Except, That, the Secretary may, when in the best interest of the certification program, reduce or eliminate the period of ineligibility.

(g) Violations of Act. In addition to suspension or revocation, any certified operation that:

(1) Knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than \$10,000 per violation.

(2) Makes a false statement under the Act to the Secretary, a State organic program's governing State official, or a certifying agent shall be subject to the provisions of section 1001 of title 18, United States Code.

### **§ 205.663 Mediation.**

Any dispute with respect to denial of certification or proposed suspension or revocation of certification under this part may be mediated at the request of the applicant for certification or certified operation and with acceptance by the certifying agent. Mediation shall be requested in writing to the applicable certifying agent. If the certifying agent rejects the request for mediation, the certifying agent shall provide written notification to the applicant for certification or certified operation. The written notification shall advise the applicant for certification or certified operation of the right to request an appeal, pursuant to § 205.681, within 30 days of the date of the written notification of rejection of the request for mediation. If mediation is accepted by the certifying agent, such mediation shall be conducted by a qualified mediator mutually agreed upon by the parties to the mediation. If a State organic program is in effect, the mediation procedures established in the State organic program, as approved by the Secretary, will be followed. The parties to the mediation shall have no more than 30 days to reach an agreement following a mediation session. If mediation is unsuccessful, the applicant for certification or certified operation shall have 30 days from termination of mediation to appeal the certifying agent's decision pursuant to § 205.681. Any agreement reached during or as a result of the mediation process shall

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be in compliance with the Act and these regulations. The Secretary may review any mediated agreement for conformity to the Act and these regulations and may reject any agreement or provision not in conformance with the Act or these regulations.

### § 205.664 [Reserved]

### § 205.665 Non-compliance procedure for certifying agents.

(a) Notification. When an inspection, review, or investigation of an accredited certifying agent by the Program Manager reveals any non-compliance with the Act or regulations in this part, a written notification of non-compliance shall be sent to the certifying agent. Such notification shall provide:

- (1) A description of each non-compliance;
- (2) The facts upon which the notification of non-compliance is based; and
- (3) The date by which the certifying agent must rebut or correct each non-compliance and submit supporting documentation of each correction when correction is possible.

(b) Resolution. When the certifying agent demonstrates that each non-compliance has been resolved, the Program Manager shall send the certifying agent a written notification of non-compliance resolution.

(c) Proposed suspension or revocation. When rebuttal is unsuccessful or correction of the non-compliance is not completed within the prescribed time period, the Program Manager shall send a written notification of proposed suspension or revocation of accreditation to the certifying agent. The notification of proposed suspension or revocation shall state whether the certifying agent's accreditation or specified areas of accreditation are to be suspended or revoked. When correction of a non-compliance is not possible, the notification of non-compliance and the proposed suspension or revocation may be combined in one notification. The notification of proposed suspension or revocation of accreditation shall state:

- (1) The reasons for the proposed suspension or revocation;
- (2) The proposed effective date of the suspension or revocation;
- (3) The impact of a suspension or revocation on future eligibility for accreditation; and
- (4) The right to file an appeal pursuant to § 205.681.

(d) Wilful violations. Notwithstanding paragraph (a) of this section, if the Program Manager has reason to believe that a certifying agent has wilfully violated the Act or regulations in this part, the Program Manager shall send a written notification of proposed suspension or revocation of accreditation to the certifying agent.

(e) Suspension or revocation. When the accredited certifying agent fails to file an appeal of the proposed suspension or revocation of accreditation, the Program Manager shall send a written notice of suspension or revocation of accreditation to the certifying agent.

(f) Cessation of certification activities. A certifying agent whose accreditation is suspended or revoked must:

- (1) Cease all certification activities in each area of accreditation and in each State for which its accreditation is suspended or revoked.
- (2) Transfer to the Secretary and make available to any applicable State organic program's governing State official all records concerning its certification activities that were suspended or revoked.

(g) Eligibility.

(1) A certifying agent whose accreditation is suspended by the Secretary under this section may at any time, unless otherwise stated in the notification of suspension, submit a request to the Secretary for reinstatement of its accreditation. The request

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must be accompanied by evidence demonstrating correction of each non-compliance and corrective actions taken to comply with and remain in compliance with the Act and the regulations in this part.

(2) A certifying agent whose accreditation is revoked by the Secretary shall be ineligible to be accredited as a certifying agent under the Act and the regulations in this part for a period of not less than 3 years following the date of such revocation.

### **§§ 205.666 and 205.667 [Reserved]**

### **§ 205.668 Non-compliance procedures under State organic programs.**

(a) A State organic program's governing State official must promptly notify the Secretary of commencement of any non-compliance proceeding against a certified operation and forward to the Secretary a copy of each notice issued.

(b) A non-compliance proceeding, brought by a State organic program's governing State official against a certified operation shall be appealable pursuant to the appeal procedures of the State organic program. There shall be no subsequent rights of appeal to the Secretary. Final decisions of a State may be appealed to the United States District Court for the district in which such certified operation is located.

(c) A State organic program's governing State official may review and investigate complaints of non-compliance with the Act or regulations concerning accreditation of certifying agents operating in the State. When such review or investigation reveals any non-compliance, the State organic program's governing State official shall send a written report of non-compliance to the Program Manager. The report shall provide a description of each non-compliance and the facts upon which the non-compliance is based.

### **§ 205.669 [Reserved]**

### **Inspection and Testing, Reporting, and Exclusion from Sale**

### **§ 205.670 Inspection and testing of agricultural product to be sold or labelled "organic."**

(a) All agricultural products that are to be sold, labelled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must be made accessible by certified organic production or handling operations for examination by the Administrator, the applicable State organic program's governing State official, or the certifying agent.

(b) The Administrator, applicable State organic program's governing State official, or the certifying agent may require pre-harvest or post-harvest testing of any agricultural input used or agricultural product to be sold, labelled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" when there is reason to believe that the agricultural input or product has come into contact with a prohibited substance or has been produced using excluded methods. Such tests must be conducted by the applicable State organic program's governing State official or the certifying agent at the official's or certifying agent's own expense.

(c) The pre-harvest or post-harvest tissue test sample collection pursuant to paragraph (b) of this section must be performed by an inspector representing the Administrator, applicable State organic program's governing State official, or certifying agent. Sample integrity must be maintained throughout the chain of custody, and residue testing must be performed in an accredited laboratory.

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Chemical analysis must be made in accordance with the methods described in the most current edition of the Official Methods of Analysis of the AOAC International or other current applicable validated methodology determining the presence of contaminants in agricultural products.

(d) Results of all analyses and tests performed under this section:

(1) Must be promptly provided to the Administrator; Except, That, where a State organic program exists, all test results and analyses shall be provided to the State organic program's governing State official by the applicable certifying party that requested testing; and

(2) Will be available for public access, unless the testing is part of an ongoing compliance investigation.

(e) If test results indicate a specific agricultural product contains pesticide residues or environmental contaminants that exceed the Food and Drug Administration's or the Environmental Protection Agency's regulatory tolerances, the certifying agent must promptly report such data to the Federal health agency whose regulatory tolerance or action level has been exceeded.

### **§ 205.671 Exclusion from organic sale.**

When residue testing detects prohibited substances at levels that are greater than 5 percent of the Environmental Protection Agency's tolerance for the specific residue detected or unavoidable residual environmental contamination, the agricultural product must not be sold, labelled, or represented as organically produced. The Administrator, the applicable State organic program's governing State official, or the certifying agent may conduct an investigation of the certified operation to determine the cause of the prohibited substance.

### **§ 205.672 Emergency pest or disease treatment.**

When a prohibited substance is applied to a certified operation due to a Federal or State emergency pest or disease treatment program and the certified operation otherwise meets the requirements of this part, the certification status of the operation shall not be affected as a result of the application of the prohibited substance:

Provided, That:

(a) Any harvested crop or plant part to be harvested that has contact with a prohibited substance applied as the result of a Federal or State emergency pest or disease treatment program cannot be sold, labelled, or represented as organically produced; and

(b) Any livestock that are treated with a prohibited substance applied as the result of a Federal or State emergency pest or disease treatment program or product derived from such treated livestock cannot be sold, labelled, or represented as organically produced: Except, That:

(1) Milk or milk products may be sold, labelled, or represented as organically produced beginning 12 months following the last date that the dairy animal was treated with the prohibited substance; and

(2) The offspring of gestating mammalian breeder stock treated with a prohibited substance may be considered organic: Provided, That, the breeder stock was not in the last third of gestation on the date that the breeder stock was treated with the prohibited substance. – In the UK this is fine for cattle but not for sheep and pigs

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### **§§ 205.673-205.679 [Reserved]** **Adverse Action Appeal Process**

#### **§ 205.680 General.**

- (a) Persons subject to the Act who believe they are adversely affected by a non-compliance decision of the National Organic Program's Program Manager may appeal such decision to the Administrator.
- (b) Persons subject to the Act who believe that they are adversely affected by a non-compliance decision of a State organic program may appeal such decision to the State organic program's governing State official who will initiate handling of the appeal pursuant to appeal procedures approved by the Secretary.
- (c) Persons subject to the Act who believe that they are adversely affected by a non-compliance decision of a certifying agent may appeal such decision to the Administrator, Except, That, when the person is subject to an approved State organic program, the appeal must be made to the State organic program.
- (d) All written communications between parties involved in appeal proceedings must be sent to the recipient's place of business by a delivery service which provides dated return receipts.
- (e) All appeals shall be reviewed, heard, and decided by persons not involved with the decision being appealed.

#### **§ 205.681 Appeals.**

- (a) Certification appeals. An applicant for certification may appeal a certifying agent's notice of denial of certification, and a certified operation may appeal a certifying agent's notification of proposed suspension or revocation of certification to the Administrator, Except, That, when the applicant or certified operation is subject to an approved State organic program the appeal must be made to the State organic program which will carry out the appeal pursuant to the State organic program's appeal procedures approved by the Secretary.
- (1) If the Administrator or State organic program sustains a certification applicant's or certified operation's appeal of a certifying agent's decision, the applicant will be issued organic certification, or a certified operation will continue its certification, as applicable to the operation. The act of sustaining the appeal shall not be an adverse action subject to appeal by the affected certifying agent.
- (2) If the Administrator or State organic program denies an appeal, a formal administrative proceeding will be initiated to deny, suspend, or revoke the certification. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Uniform Rules of Practice or the State organic program's rules of procedure.
- (b) Accreditation appeals. An applicant for accreditation and an accredited certifying agent may appeal the Program Manager's denial of accreditation or proposed suspension or revocation of accreditation to the Administrator.
- (1) If the Administrator sustains an appeal, an applicant will be issued accreditation, or a certifying agent will continue its accreditation, as applicable to the operation.
- (2) If the Administrator denies an appeal, a formal administrative proceeding to deny, suspend, or revoke the accreditation will be initiated. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Uniform Rules of Practice, 7 CFR Part 1, Subpart H.
- (c) Filing period. An appeal of a non-compliance decision must be filed within the time period provided in the letter of notification or within 30 days from receipt of the

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notification, whichever occurs later. The appeal will be considered "filed" on the date received by the Administrator or by the State organic program. A decision to deny, suspend, or revoke certification or accreditation will become final and non-appealable unless the decision is appealed in a timely manner.

(d) Where and what to file.

(1) Appeals to the Administrator must be filed in writing and addressed to Administrator, USDA-AMS, Room 3071-S, P.O. Box 96456, Washington, DC 20090-6456.

(2) Appeals to the State organic program must be filed in writing to the address and person identified in the letter of notification.

(3) All appeals must include a copy of the adverse decision and a statement of the appellant's reasons for believing that the decision was not proper or made in accordance with applicable program regulations, policies, or procedures.

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