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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 205

[Document Number AMS–NOP–20–0002; NOP–20–01]

#### National Organic Program: USDA Organic Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** 2020 sunset review and substance renewals.

**SUMMARY:** This document announces the renewal of substances listed on the National List of Allowed and Prohibited Substances (National List) within the U.S. Department of Agriculture's (USDA) organic regulations. This document reflects the outcome of the 2020 sunset review process and addresses recommendations submitted to the Secretary of Agriculture (Secretary), through the USDA's Agricultural Marketing Service (AMS), by the National Organic Standards Board (NOSB).

**DATES:** This action is effective June 22, 2020.

**FOR FURTHER INFORMATION CONTACT:** Shannon Nally Yanessa, Standards Division, *Telephone:* (202) 720–3252; *Fax:* (202) 260–9151.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

USDA AMS administers the National Organic Program (NOP) under the authority of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501–6524). The regulations implementing the NOP, also referred to as the USDA organic regulations (7 CFR part 205), were published on December 21, 2000 (65 FR 80548) and became effective on October 21, 2002. Through these regulations, AMS oversees national organic standards for the production, handling, and labeling of organically produced

agricultural products. Since October 2002, the USDA organic regulations have been frequently amended, mostly for changes to the National List in 7 CFR 205.601 through 606.

The National List identifies the synthetic substances allowed to be used and the nonsynthetic substances prohibited from use in organic farming. The National List also identifies synthetic and nonsynthetic nonagricultural substances, and nonorganic agricultural substances that may be used in organic handling. The OFPA and USDA organic regulations specifically prohibit the use of any synthetic substance in organic production and handling unless an exemption for using the synthetic substance is provided on the National List. Section 205.105 of the USDA organic regulations also requires that any nonorganic agricultural substance and any nonagricultural substance used in organic handling be listed as allowed on the National List.

The OFPA at 7 U.S.C. 6518 authorizes the NOSB, operating in accordance with the Federal Advisory Committee Act (§ 1 *et seq.*, 5 U.S.C. App.2), to assist in evaluating substances to be allowed or prohibited for organic production and handling and to advise the Secretary on the USDA organic regulations. The OFPA sunset provision (7 U.S.C. 6517(e)) also requires a review of all substances included on the National List within five years of their addition to or renewal on the list. During this sunset review, the NOSB considers any new information pertaining to a substance's impact on human health and the environment, its necessity due to the unavailability of wholly natural substances, and its consistency with organic production and handling. The NOSB subsequently votes to remove a substance allowance or prohibition from the National List.

The Agricultural Improvement Act of 2018 amended the OFPA at 7 U.S.C. 6518(i)(2) to specify that any vote on a motion proposing to amend the National List requires  $\frac{2}{3}$  of the votes cast at a meeting of the NOSB at which a quorum is present to prevail. A substance remains listed on the National List unless an NOSB motion to remove that substance carries with  $\frac{2}{3}$  of votes cast, and the Secretary subsequently renews or amends the listing for the substance. The NOSB submits its sunset review

and recommendations to the Secretary. As delegated by the Secretary, AMS evaluates the sunset review and recommendations for compliance with the National List substance evaluation criteria set forth in the OFPA at 7 U.S.C. 6518(m) and other federal statutes or regulations. AMS also considers public comments submitted in association with a specific sunset review process.

AMS published an updated sunset review process in the **Federal Register** on September 16, 2013 (78 FR 56811).<sup>1</sup> In accordance with the sunset review process, AMS published two notices in the **Federal Register** announcing the NOSB meetings on April 25–27, 2018, and October 24–26, 2018, and inviting public comments on the 2020 sunset review process (January 17, 2018 (83 FR 2373)<sup>2</sup> and August 9, 2018 (83 FR 39376)).<sup>3</sup> AMS also hosted two public webinars (April 17 and 19, 2018, and October 16 and 18, 2018) to provide additional opportunities for public comment. The NOSB received additional comment during the public meetings. At these public meetings, the NOSB reviewed substance listings scheduled to sunset from the National List and concluded that these listings should not be removed. Table 1 shows the current listings for these substances.

AMS has reviewed and accepted the NOSB's 2020 sunset review recommendations and is renewing the listings of these substances until 2025.<sup>4</sup> AMS has determined that the substance allowances listed in this notice continue to be necessary for organic production and/or organic handling because of the unavailability of organic forms or wholly natural substitutes for the specified uses (§ 6517(c)(1)(A)(ii)). The renewal of these substance allowances will avoid potential disruptions to the organic industry and consumers that may otherwise result from removal from the National List. AMS also has determined that the prohibited nonsynthetic substance listed in this

<sup>1</sup> <https://www.federalregister.gov/documents/2013/09/16/2013-22388/national-organic-program-sunset-process>.

<sup>2</sup> <https://www.federalregister.gov/documents/2018/01/17/2017-28170/meeting-of-the-national-organic-standards-board>.

<sup>3</sup> <https://www.federalregister.gov/documents/2018/08/09/2018-16386/meeting-of-the-national-organic-standards-board>.

<sup>4</sup> National List Sunset Dates, NOP 5611, <https://www.ams.usda.gov/sites/default/files/media/NOP-SunsetDates.pdf>.

notice should remain prohibited because use of this substance would be inconsistent with organic production (§ 6517(c)(2)(A)(ii)).

The NOSB also reviewed and subsequently recommended to the Secretary the removal of sucrose

octanoate esters (§ 205.601 and § 205.603). AMS is reviewing the NOSB recommendations to remove this substance from the National List. Any removals from the National List would be addressed in a separate notice and comment rulemaking.

Table 1 lists the substance exemptions being renewed through this document. These specific substance allowances and prohibitions continue as listed on the National List with a new sunset date of June 22, 2025.

TABLE 1—NATIONAL LIST SUBSTANCES RENEWED IN 2020 SUNSET REVIEW

Substance	Use conditions
§ 205.601 Synthetic substances allowed for use in organic crop production.	
Alcohols: Ethanol, Isopropanol .....	As described under § 205.601(a)(1)(i) and (ii).
Sodium carbonate peroxyhydrate .....	As described under § 205.601(a)(8).
Mulches: Newspaper or other recycled paper, Plastic mulch and covers	As described under § 205.601(b)(2)(i) and (ii).
Compost feedstocks: Newspaper or other recycled paper .....	As described under § 205.601(c).
Insecticides: Aqueous potassium silicate, Elemental sulfur, Lime sulfur	As described under § 205.601(e)(2), (5) and (6).
Plant disease control: Aqueous potassium silicate, Hydrated lime, Lime sulfur, Elemental Sulfur.	As described under § 205.601(i)(1), (4), (6) and (10).
Plant or soil amendments: Elemental sulfur, Liquid fish products, Sulfurous acid.	As described under § 205.601(j)(2), (8) and (11).
Plant growth regulators: Ethylene gas .....	As described under § 205.601(k).
Production aids: Microcrystalline cheesewax .....	As described under § 205.601(o).
§ 205.602 Nonsynthetic substances prohibited for use in organic crop production.	
Potassium chloride .....	As described under § 205.602(e).
§ 205.603 Synthetic substances allowed for use in organic livestock production.	
Alcohols: Ethanol, Isopropanol .....	As described under § 205.603(a)(1)(i) and (ii).
Aspirin .....	As described under § 205.603(a)(2).
Biologics .....	As described under § 205.603(a)(4).
Electrolytes .....	As described under § 205.603(a)(11).
Glycerin .....	As described under § 205.603(a)(14).
Phosphoric acid .....	As described under § 205.603(a)(25).
Hydrated lime .....	As described under § 205.603(b)(6).
Mineral oil .....	As described under § 205.603(a)(7).
§ 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))”.	
Calcium carbonate .....	As described under § 205.605(a).
Flavors .....	As described under § 205.605(a).
Gellan gum .....	As described under § 205.605(a).
Oxygen .....	As described under § 205.605(a).
Potassium chloride .....	As described under § 205.605(a).
Alginates .....	As described under § 205.605(b).
Calcium hydroxide .....	As described under § 205.605(b).
Ethylene .....	As described under § 205.605(b).
Glycerides .....	As described under § 205.605(b).
Magnesium stearate .....	As described under § 205.605(b).
Phosphoric acid .....	As described under § 205.605(b).
Potassium carbonate .....	As described under § 205.605(b).
Sulfur dioxide .....	As described under § 205.605(b).
Xanthan gum .....	As described under § 205.605(b).
§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as “organic.”	
Fructooligosaccharides .....	As described under § 205.606(f).
Gums .....	As described under § 205.606(i).
Lecithin .....	As described under § 205.606(m).
Tragacanth gum .....	As described under § 205.606(t).

Authority: 7 U.S.C. 6501–6524.

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 Service.

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