Washington State Department of Agriculture
Organic Food Program

APPLICATION
ORGANIC HANDLER CERTIFICATION

4102

NOTE: The entire certification process takes approximately 90-120 days.

CONTACT PERSON		
BUSINESS NAME		
MAILING ADDRESS		
CITY	STATE	ZIP
PRIMARY PHONE NUMBER	ALTERNATE PHONE NUMBER	
FAX NUMBER	EMAIL ADDRESS	
PHYSICAL LOCATION OF FACILITY **(A separate application is needed for each facility.)**	COUNTY	
CITY	STATE	PHONE

Application Fees

Gross Revenue	Fee	Gross Revenue	Fee	Gross Revenue	Fee
$0- $50,000	$200	$750,001- $1,000,000	$1,100	$5,000,001- $6,000,000	$5,500
$50,001- $75,000	$250	$1,000,001- $1,250,000	$1,375	$6,000,001- $7,000,000	$6,600
$75,001- $100,000	$330	$1,250,001- $1,500,000	$1,650	$7,000,001- $8,000,000	$7,700
$100,001- $200,000	$440	$1,500,001- $2,000,000	$2,200	$8,000,001- $9,000,000	$8,800
$200,001- $300,000	$550	$2,000,001- $2,500,000	$2,750	$9,000,001- $10,000,000	$9.900
$300,001- $400,000	$660	$2,500,001- $3,000,000	$3,300	Over $10,000,000	$11,000
$400,001- $500,000	$770	$3,000,001- $4,000,000	$3,850		
$500,001- $750,000	$990	$4,000,001- $5,000,000	$4,400		

Application fees are based on an estimate of the current calendar year's gross revenue (sales and/or service fees) of organic products. Please find your fee in the table above that corresponds to the estimated sales of organic products.

Estimated calendar year gross revenue (sales and/or service fees) of organic products.

$__ _____

Application Fee: _____

+ "New Applicant" Fee: **$100**
(non-refundable)

= Total Fee Enclosed _____

Agreement [The person signing the application must be authorized to represent the firm.]

I (We) [Business Name] _____ depose and say that I (we) will fully comply with the statute and rules for the handling of organic products at this facility.

Signature of Representative _____ **Date** _____

Print Name _____ **Title** _____

SEND APPLICATION AND FEE TO: Washington State Dept of Agriculture PO Box 42591 Olympia WA 98504-2591	**Checks returned by the bank will be charged a handling fee of $25.00** (RCW 62A.3.51(a) and 62A.3.520) **Note: All business related information submitted or collected is confidential and exempt from public inspection and copying (RCW 15.86.110)**

HANDLING & PROCESSING ORGANIC SYSTEM PLAN

NAME: _____ COUNTY: _____

BUSINESS NAME: _____

A. GENERAL INFORMATION

Year company began: _____ Year first certified: _____

Name of person overseeing organic production: _____

Are employees trained on organic handling/processing requirements? ❑ Yes ❑ No

If "Yes", please describe the training process. _____

_____

_____

Has your business applied for certification previously? ❑ Yes ❑ No

If "Yes", list the certifier, the year the application was made, and the outcome of the application: _____

_____

_____

Have you ever been denied certification? ❑ Yes ❑ No

If "Yes", please describe the circumstances. _____

_____

_____

_____

List current organic certification by other agencies: _____

Preferred time and season for inspection visit: ❑ Morning ❑ Afternoon Season: _____

B. HANDLER CATEGORIES (If you are a processor, please move on to section "C".)

Please indicate which categories apply to your business. Check all categories that apply.

☐ **Packer**
A packing operation receives raw agricultural products and packs the products for shipping. The packer may or may not take title to the product. A packer may be involved in cleaning the products prior to packing.

☐ **Repacker**
A repacker receives packed or packaged products, removes the products from the original container, may or may not sort the product, and repacks the product for sale in either the original container or in a different container.

☐ **Distributor**
A distributor receives packed or processed agricultural products, usually from shippers, processors, or other distributors, and sells or distributes those products to processors, other distributors or retail stores. Distributors may or may not take title to the product.

☐ **Warehouse**
A warehouse receives and stores products. A warehouse does not take legal title to the product. A warehouse does not open product containers, mix, combine, or otherwise handle the product while it is in custody.

☐ **Broker**
A broker acts as an agent for others in negotiating a sales contract. A broker may or may not take legal title to the product.

☐ **Retailer**
A retailer is a business operating from an established place of business that sells food products directly to consumers. If you plan to apply for certification for part of your retail business, please indicate which departments you plan to get certified: _____

☐ **Other:** _____

HANDLING & PROCESSING ORGANIC SYSTEM PLAN

C. CERTIFICATION VERIFICATION

Do you have organic certificates that cover all of the organic products that you handle/process? ❑ Yes ❑ No

How often are the certificates updated? ❑ Monthly ❑ Yearly ❑ Other _____

Are all of the certificates from USDA Accredited Organic Certification Agencies? ❑ Yes ❑ No

Do you obtain valid organic certificates from USDA Accredited Organic Certification Agencies prior to processing new products? ❑ Yes ❑ No

D. HARVEST AND TRANSPORTATION

Are you responsible for harvest or transportation of organic product(s)? ❑ Yes ❑ No (If "No", do not complete this section.)

Are you responsible for hauling the organic product(s) from the field to your facility? ❑ Yes ❑ No

Explain how containers of organic products are identified at receiving. Are they labeled as organic when they are received? Do they have an identity code or lot code? ❑ N/A (Not Applicable)

_____

_____

_____

Does the Bill of Lading or other transportation document clearly indicate that the product is organic?

❑ Yes ❑ No ❑ N/A

If you use bulk trucks to haul product, what measures do you take to protect the integrity of the organic products? (Check those that apply to your facility). ❑ N/A No bulk product received.

❑ Use clean truck affidavits ❑ Clean containers prior to harvest - Is this documented? ❑ Yes ❑ No

❑ Other _____

E. RECEIVING AND STORAGE

Does this facility receive or store organic product? ❑ Yes ❑ No (If "No", do not complete this section.)

Are non-organic products processed at your facility? ❑ Yes ❑ No

What records do you keep upon receipt of organic product into your facility? (Check those that apply.)

❑ Bill of lading ❑ Invoice ❑ Scale ticket ❑ Receiving ticket ❑ Other _____

Is an internal lot code assigned at the time of receipt? ❑ Yes ❑ No

If "Yes", describe the lot numbering System. _____

_____

_____

_____

Do you receive bulk product? ❑ Yes ❑ No

If "Yes", is the incoming organic bulk product storage area clearly identified as organic? ❑ Yes ❑ No

HANDLING & PROCESSING ORGANIC SYSTEM PLAN

F. PROCESSING, PACKING, OR REPACKING

Does this facility process, pack, or repack organic product(s)? ❑ Yes ❑ No (If "No", do not complete this section.)

What records are kept when you process, pack or repack organic products? (Check those that apply.)

❑ Daily production log ❑ Waste log ❑ Cleaning of lines
❑ Shift production log ❑ Shrinkage log ❑ Other _____
❑ QC report ❑ Daily production tally
❑ Product specification sheet ❑ Chlorine levels

Do you clean the lines prior to processing/packing organic products? ❑ Yes ❑ No ❑ N/A (Not Applicable)

If "Yes", please list the cleansers and sanitizers that are used on food bearing surfaces.

Material (Complete Name)	Application and Use (Explain how the material is used, what it is used on, and how often it is used.)

Could any cleanser or sanitizer contaminate the organic product(s)? ❑ Yes ❑ No ❑ N/A (Not Applicable)

Are quaternary ammonium compounds used for sanitizing food-bearing surfaces? ❑ Yes ❑ No ❑ N/A

If "Yes", what steps are taken to insure that they do not leave any residues on the organic food bearing surfaces?

_____

_____

_____

Are post harvest materials used in your facility? ❑ Yes ❑ No

If "Yes", list the post harvest materials in the table below. Include waxes, atmospheric gases, fungicides, sanitizers and cleansers used in process water and any other material that could contact the food products.

Product (Complete Name)	Used during organic packing?	Application and Purpose

HANDLING & PROCESSING ORGANIC SYSTEM PLAN

G. WATER AND STEAM

Is water used in the processing, packing, or repacking of organic products? ❑ Yes ❑ No (If "No", do not complete this section.)

What is the water source at your facility? _____

Is the water re-circulated? ❑ Yes ❑ No

Is the water potable? ❑ Yes ❑ No

Do you treat the water on site? ❑ Yes ❑ No

Is chlorine used in wash water or flume water? ❑ Yes ❑ No ❑ N/A (Not Applicable)

If "Yes", is chlorine maintained at 50 ppm or below? ❑ Yes ❑ No

How is this monitored? _____

_____

Is it followed by a potable water rinse? ❑ Yes ❑ No

Is culinary steam used in the processing, packing, or repacking of organic products? ❑ Yes ❑ No

If steam has direct contact with organic products, do you use: ❑ N/A No direct contact

❑ Steam filters ❑ Condensate traps ❑ Other _____

List products used as boiler additives: _____

_____

Do you implement water conservation strategies at your facility? ❑ Yes ❑ No

If "Yes", please describe. _____

_____

_____

H. PACKAGING

Does this facility package organic product(s)? ❑ Yes ❑ No (If "No", do not complete this section.)

What type(s) of packaging materials do you use? (Check all that apply.)

❑ Paper	❑ Glass	❑ Aseptic
❑ Cardboard	❑ Metal	❑ Synthetic fiber
❑ Wood	❑ Foil	❑ Natural fiber
❑ Plastic	❑ Waxed paper	❑ Other _____

Are packaging materials food grade? ❑ Yes ❑ No

Are packaging materials free of prohibited materials? ❑ Yes ❑ No

Are packaging materials recyclable? ❑ Yes ❑ No

Are packaging materials returnable? ❑ Yes ❑ No

Is organic identity clear on all packaging and labeling? ❑ Yes ❑ No

Describe how you identify packaging as organic. _____

_____

_____

HANDLING & PROCESSING ORGANIC SYSTEM PLAN

Is all packaging and labeling equipment cleared of organic identification prior to all subsequent conventional runs?

❑ Yes ❑ No

Describe how partial pallets/boxes/drums/etc. of organic products are processed. ❑ N/A (Not Applicable)

_____

_____

_____

I. STORAGE AND SHIPPING

Does this facility store or ship organic product(s)? ❑ Yes ❑ No (If "No", do not complete this section.)

What warehouse, shipping, and sales documents do you maintain? (Check all that apply.)

❑ Pallet/tote ticket ❑ Purchase/sale order ❑ Other _____

❑ Picking ticket ❑ Bill of lading

❑ Warehouse inventory ❑ Sales invoice

Do all documents clearly identify the product as organic? ❑ Yes ❑ No

Where do you store organic products? _____

_____

Are organic products stored in Controlled Atmosphere? ❑ Yes ❑ No

If "Yes", are the organic controlled atmosphere rooms on a separate air supply from rooms that contain treated fruit?

❑ Yes ❑ No

J. PEST MANAGEMENT

What type of pest management system do you use?

❑ In-house - Name of responsible person: _____ Phone: _____

❑ Contract service - Name: _____ Phone: _____

What type of pest problems have you had?

❑ None ❑ Crawling insects ❑ Product contamination

❑ Flying insects ❑ Rodents ❑ Other _____

What monitoring techniques are used to monitor pests?

❑ Pheromone traps ❑ Product sampling ❑ Other _____

What preventative and/or management methods are used to control pests *inside* your facility?

❑ Good sanitation ❑ Removal of exterior habitat/food sources ❑ Crack and crevice sprays*

❑ Sealed doors/windows ❑ Insecticidal sticky strips/traps*

❑ Air curtains ❑ Bait/baited traps* ❑ Other _____

❑ U.V. light insectocutors ❑ Fogging*

❑ Sticky traps ❑ Fumigation*

**Organic products must be removed from the building to implement these pest control methods.* Explain how organic products are protected from exposure to these materials. _____

_____

HANDLING & PROCESSING ORGANIC SYSTEM PLAN

K. STANDARD OPERATION PROCEDURES

Does your facility have Standard Operation Procedures for processing organic products? ❑ Yes ❑ No

If "Yes", please attach a copy of these operating procedures to this Organic Processing System Plan.

L. QUALITY ASSURANCE

Do you have a Quality Assurance program in place? ❑ Yes ❑ No

If "Yes", what program do you use? ❑ American Institute of Baking ❑ Total Quality Management

❑ Hazard Analysis of Critical Control Points ❑ Other _____

Do you have a product recall system in place? ❑ Yes ❑ No

If "Yes", please describe. _____

_____

_____

M. FLOW CHART / CHAIN OF CUSTODY

Provide a flow chart that outlines the flow of organic product through the facility. Include receiving, initial storage, processing procedures, final packaging, and storage.

ORGANIC HANDLER CERTIFICATION PRODUCT(S) LIST

DISTRIBUTORS, RETAILERS, WAREHOUSES, AND BROKERS

Distributors, Retailers, Warehouses, and Brokers must submit a list of their products. This list can be in the form of a catalog, price sheet, or other format as long as it is a complete list of all products that make an "organic" claim on the label.

PACKERS AND RE-PACKERS

Packers and Re-packers must submit the following items prior to receiving organic certification.

1. **Product List**
2. **Label**

PRODUCT LIST

List all organic products your business sells, offers for sale, stores, packs or cleans. If you handle organic apples and/or pears, please include the varieties of apples and/or pears. Specify the supplier of each organic product listed. If you have multiple suppliers for each product, list all of the suppliers.

Organic Products	Supplier of Product
Ex. 1: Organic Gala Apples	*Granny's Orchard*
Ex. 2: Organic Rye Flour	*Open Prairie Farm; Organic Grain Dealers*
Ex. 3: Organic Pineapple Juice	*Tropical Paradise Farms; Florida Distributing*

LABELS

Submit a copy of your organic labeling for review. Attach a copy of your labeling to this sheet or sketch a rough draft of your proposed labeling. **Labeling means all labels and other written, printed or graphic material on any container or wrapper, including tags on bulk items leaving the facility.**

NOTE: Supplier certificates for the above listed products must be obtained, kept on file at your facility, and be available for inspection in order for your products to become certified.

STATE OF WASHINGTON

DEPARTMENT OF AGRICULTURE

P.O. Box 42560 • Olympia, Washington 98504-2560 • (360) 902-1800

Organic Handler & Processor Information

What is organic food?

The National Organic Standards Board defines organic agriculture as an ecological production management system that promotes and enhances bio-diversity, biological cycles, and soil biological activity. It is based on minimal use of off-farm inputs and on management practices that restore, maintain, and enhance ecological harmony. 'Organic' is a labeling term that denotes products produced under the authority of the Organic Foods Production Act of 1990.

What is organic certification?

Organic certification means that an independent, third party has verified that the requirements of organic crop production, processing and handling have been met. Under the National Organic Program, all products sold as organic in the United States must be certified by a National Organic Program (NOP) accredited certification agency.

Do all processors and handlers of organic food need to be certified?

Except for handlers and processors exempt or excluded from certification, all processors and handlers of organic food must be certified.

<u>Exemptions</u>

1. Handlers that sell less than $5,000 worth of organic products.
2. Retail food stores.
3. Processors that produce products with less than 70 percent organic ingredients.
4. Processors that produce products that limit their organic claims to the information panel.

<u>Exclusions</u>

5. Handlers that only sell packaged organic food products.
6. Retailers that have in-store bakeries, delicatessen, salad bar or ready to eat food.

What are the requirements for handlers and processors of organic food?

- Processors and handlers must complete an Organic System Plan.
- Procedures must be in place that ensure that no commingling or misidentification occurs between organic food products and non-organic food products.
- Prohibited substances used within the processing or handling facility must not come in contact or contaminate the organic food products.
- A list of all organic ingredients used in organic products must be provided. All organic ingredients must be certified by NOP accredited certification agencies. A Product Formulation form is included in your application for this purpose.
- Labels for all organic food products must be submitted and approved prior to obtaining organic certification.
- All organic food products must be processed with only approved minor ingredients and processing aids.

Are there restrictions on post-harvest materials, minor ingredients and processing aids that I can use?

Yes. Generally, only naturally derived materials can be used to extend shelf life or storage time. The rules prohibit use of irradiation, synthetic preservatives, fumigants and artificial flavors or colors.

What records am I required to keep?

Complete and accurate records must be kept that track the organic food products from receiving through final sale or shipping. All records must be kept in sufficient detail as to be readily understood and audited and must be sufficient to demonstrate compliance with the National Organic Program. Records must be maintained for five years. An audit of your practices will take place during your organic food inspection to ensure that appropriate records are being kept.

What other Licenses may be required?

A Wholesale Food Processor's License is required when you process a food or beverage to sell wholesale (wholesale is defined as selling your product for resale. For example: restaurants, grocery stores, espresso stands). If you are cutting, mixing (salad mixes, mixing sprouts), re-packing products, roasting coffee, and/or processing any food and beverage products for wholesale distribution you are required to be licensed as a Wholesale Food Processor. Contact Denise Curette, Food Safety Program in Olympia at 360-902-1876 or e-mail: dcurette@agr.wa.gov to get information on the licensing procedure.

How do I get certified?

- Step 1: Complete and submit an Application, Organic System Plan and application fees.
- Step 2: Be available for an inspection. The inspector will review receiving, storage, processing and shipping areas; review productions records, conduct an audit of organic products handled or processed by the facility; and review labels and formulas of organic food products.
- Step 3: After inspecting the facility, an inspection report is reviewed by WSDA staff. If all practices and documentation are in compliance with program standards, an Organic Certificate is issued.

How long does it take to get certified?

New Applicants - If all the necessary information is received in a timely manner, the inspection and certification process takes approximately 90-120 days. Incomplete applications will delay the certification process. Due to the large volume of inspections needing to be conducted, it may take an organic food inspector several weeks to fit a new inspection into their schedule.

Renewal Applicants - Organic certification is an annual procedure. WSDA mails renewal applications in January or February of each year. An application, system plan update, and fee (based on the previous calendar year gross revenue) needs to be submitted to WSDA every year and the renewal application must be postmarked by March 1st. If the renewal application is not postmarked by the due date, a $75 late fee will be charged. Renewal applicants are issued their organic certificate after their application is received, reviewed, and approved.

Export of WSDA certified Organic Food Products

Europe

Export of WSDA certified organic products to Europe is growing rapidly each year. European Union (EU) regulations differ from US National Organic Standards in several important areas. If a WSDA certified product is going to be used as an ingredient in a processed good certified by a European agency, stricter production, processing, and handling rules will apply. In order to enable your product easier access to European markets, it is recommended that you consider the following information:

- The EU prohibits the use of sodium nitrate on organic crops. WSDA must have documentation to verify that no sodium nitrate has been used on crops intended for export to the European Union. It is highly recommended that you do not use sodium nitrate if any part of your crop is headed for European markets.
- Several European certification agencies prohibit the use of manure from factory farms.
- Several European certification agencies prohibit the use of manure that has come from an animal that has consumed feed, primarily corn and soybeans, that contains Genetically Modified Organisms (GMO).
- Several European certification agencies prohibit the production of any GMO crop on the same holding as an organic crop.
- Several European certification agencies prohibit chlorine substances in post harvest handling.
- European organic standards do not allow antibiotics to be used for disease control in tree fruits.

Japan

JAS certification is required by the Japanese Ministry of Agriculture, Food, and Fisheries (MAFF) for all retail food products sold as "organic" in Japan. JAS certification can only be granted by a Japanese MAFF approved Recognized Certification Organization (RCO). To obtain RCO status, the certification agency must be based in Japan. Since WSDA is not able to gain RCO recognition, we have built strong working relationships with several Japan based certification agencies. Upon request, WSDA can provide inspections on behalf of Japanese certifiers to determine JAS compliance.

Bulk (non-retail) organic products that do not have the JAS label do not require JAS certification. For bulk products, WSDA must verify that no potassium bicarbonate, lignin sulfonate, or alkali-extracted humic acids have been used in order to issue a USDA Japanese Export Certificate.

Export Certificates

Export Certificates and other documents are often needed to accompany shipments of organic food to foreign markets. Export Certificates verify that the shipment has been produced, handled, and processed in accordance with foreign organic standards. Applications for Export Certificates are available upon request. **If you have further questions pertaining to the export of WSDA certified organic food products, please contact Rachael Jamison at (360) 902-1951 or e-mail: rjamison@agr.wa.gov.**

Organic Advisory Board

The WSDA Organic Advisory Board (OAB) was established in 1987 to advise WSDA concerning the implementation of the Organic Food Program. The OAB consists of organic producers, processors, handlers and other interested parties that meet to discuss the Organic Food Program and recommend policy to the WSDA Organic Food Program. The members of the board include:

- Michaele Blakely, Growing Things, Carnation
- Dain Craver, Crave Organic Orchard, Royal City
- Michele Catalano, Pike Place Market CSA Program, Seattle
- David Granatstein, WSU Center for Sustaining Agriculture and Natural Resources, Wenatchee
- Orlin Knutson, Alamo Orchards, Mattawa
- Marilyn Lynn, Rama Farms, Bridgeport
- Alec McErlich, Small Planet Foods, Sedro-Woolley
- Tim Morrisey, Coyote Creek Farm, Rochester
- Harold Ostenson, Pacific Organic Produce, George
- Rick Repp, Northwest Natural Farm, Endicott
- Phil Unterschuetz, Integrated Fertility Management, Wenatchee
- Roger Wechsler, Samish Bay Cheese, Bow

The Organic Advisory Board meetings are open to the public. Contact Miles McEvoy at (360) 902-1924 or mmcevoy@agr.wa.gov for more information.

Organic Food Program staff

- Mark Amrhein, Material Review Specialist, Olympia, (360) 902-1882, mamrhein@agr.wa.gov - Evaluates materials for brand name material registration; Inspector; Reviewer.
- Christa Bemis, Organic Office Assistant Senior, Olympia, (360) 902-1805, cbemis@agr.wa.gov – Administrative support; Receptionist.
- Brenda Book, Organic Program Assistant, Olympia, (360) 902-1987, bbook@agr.wa.gov – Administrative support.
- Richard Carr, Organic Food Inspector, Mount Vernon, (360) 561-2404, rcarr@agr.wa.gov – Inspector, North Western Washington; Reviewer.
- Jeff Collins, Organic Food Inspector, Chelan, (509) 682-8457, jcollins@agr.wa.gov – Inspector, North Central Washington.
- Les Eklund, Organic Field Supervisor, Olympia, (360) 902-1891, leklund@agr.wa.gov - Supervises and trains field inspectors; Inspector, Quality Assurance.
- Mike Haskett, Organic Food Inspector, Yakima, (509) 225-2612, mhaskett@agr.wa.gov - Inspector, South Central Washington.
- Rachael Jamison, Organic Program Specialist, Olympia, (360) 902-1951, rjamison@agr.wa.gov – Coordinates work on organic export issues; Inspector; Reviewer.
- Katherine Lange, Organic Food Inspector, Olympia, (360) 902-1877, klange@agr.wa.gov – Inspector, South Western Washington.
- Miles McEvoy, Organic Program Manager, Olympia, (360) 902-1924, mmcevoy@agr.wa.gov – Manages program; Compliance and enforcement; Budget; Personnel; Legislative and rule changes; National Organic Program implementation.
- John Morrison, Organic Food Inspector, Spokane, (208) 882-7322, jmorrison@agr.wa.gov - Inspector, Eastern Washington.
- Marcia Wilkinson, Organic Certification Coordinator, Olympia, (360) 902-1885, mwilkinson@agr.wa.gov – Coordinates processor and handler certification; Reviewer; Document control; Accreditation coordinator.

If you have any questions regarding certification, please contact Christa Bemis at (360) 902-1805, FAX (360) 902-2087, e-mail: **cbemis@agr.wa.gov** view the Organic Food Program web site at www.wa.gov/agr/foodanimal/organic/default.htm.

PART 205 - NATIONAL ORGANIC PROGRAM

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Sec.

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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)).”

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)).”

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Authority: 7 U.S.C. 6501-6522

Subpart A - Definitions

§ 205.1 Meaning of words.

For the purpose of the regulations in this subpart, words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand.

§ 205.2 Terms defined.

Accreditation. A determination made by the Secretary that authorizes a private, foreign, or State entity to conduct certification activities as a certifying agent under this part.

Act. The Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 et seq.).

Action level. The limit at or above which the Food and Drug Administration will take legal action against a product to remove it from the market. Action levels are based on unavoidability of the poisonous or deleterious substances and do not represent permissible levels of contamination where it is avoidable.

Administrator. The Administrator for the Agricultural Marketing Service, United States Departure of Agriculture, or the representative to whom authority has been delegated to act in the stead of the Administrator.

Agricultural inputs. All substances or materials used in the production or handling of organic agricultural products.

Agricultural product. Any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock, that is marketed in the United States for human or livestock consumption.

Allowed synthetic. A substance that is included on the National List of synthetic substances allowed for use in organic production or handling.

Agricultural Marketing Service (AMS). The Agricultural Marketing Service of the United States Department of Agriculture.

Animal drug. Any drug as defined in section 201 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 321), that is intended for use in livestock, including any drug intended for use in livestock feed but not including such livestock feed.

Annual seedling. A plant grown from seed that will complete its life cycle or produce a harvestable yield within the same crop year or season in which it was planted.

Area of operation. The types of operations: crops, livestock, wild-crop harvesting or handling, or any combination thereof that a certifying agent may be accredited to certify under this part.

Audit trail. Documentation that is sufficient to determine the source, transfer of ownership, and transportation of any agricultural product labeled as "100 percent organic," the organic ingredients of any agricultural product labeled as "organic" or "made with organic (specified ingredients)" or the organic ingredients of any agricultural product containing less than 70 percent organic ingredients identified as organic in an ingredients statement.

Biodegradable. Subject to biological decomposition into simpler biochemical or chemical components.

Biologics. All viruses, serums, toxins, and analogous products of natural or synthetic origin, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components of microorganisms intended for use in the diagnosis, treatment, or prevention of diseases of animals.

Breeder stock. Female livestock whose offspring may be incorporated into an organic operation at the time of their birth.

Buffer zone. An area located between a certified production operation or portion of a

production operation and an adjacent land area that is not maintained under organic management. A buffer zone must be sufficient in size or other features (e.g., windbreaks or a diversion ditch) to prevent the possibility of unintended contact by prohibited substances applied to adjacent land areas with an area that is part of a certified operation.

Bulk. The presentation to consumers at retail sale of an agricultural product in unpackaged, loose form, enabling the consumer to determine the individual pieces, amount, or volume of the product purchased.

Certification or certified. A determination made by a certifying agent that a production or handling operation is in compliance with the Act and the regulations in this part, which is documented by a certificate of organic operation.

Certified operation. A crop or livestock production, wild-crop harvesting or handling operation, or portion of such operation that is certified by an accredited certifying agent as utilizing a system of organic production or handling as described by the Act and the regulations in this part.

Certifying agent. Any entity accredited by the Secretary as a certifying agent for the purpose of certifying a production or handling operation as a certified production or handling operation.

Certifying agent's operation. All sites, facilities, personnel, and records used by a certifying agent to conduct certification activities under the Act and the regulations in this part.

Claims. Oral, written, implied, or symbolic representations, statements, or advertising or other forms of communication presented to the public or buyers of agricultural products that relate to the organic certification process or the term, "100 percent organic," "organic," or "made

with organic (specified ingredients or food group(s))," or, in the case of agricultural products containing less than 70 percent organic ingredients, the term, "organic," on the ingredients panel.

Commercially available. The ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling, as determined by the certifying agent in the course of reviewing the organic plan.

Commingling. Physical contact between unpackaged organically produced and nonorganically produced agricultural products during production, processing, transportation, storage or handling, other than during the manufacture of a multiingredient product containing both types of ingredients.

Compost. The product of a managed process through which microorganisms break down plant and animal materials into more available forms suitable for application to the soil. Compost must be produced through a process that combines plant and animal materials with an initial C:N ratio of between 25:1 and 40:1. Producers using an in-vessel or static aerated pile system must maintain the composting materials at a temperature between 131°F and 170°F for 3 days. Producers using a windrow system must maintain the composting materials at a temperature between 131° F and 170° F for 15 days, during which time, the materials must be turned a minimum of five times.

Control. Any method that reduces or limits damage by populations of pests, weeds, or diseases to levels that do not significantly reduce productivity.

Crop. A plant or part of a plant intended to be marketed as an agricultural product or fed to livestock.

Crop residues. The plant parts remaining in a field after the harvest of a crop, which

include stalks, stems, leaves, roots, and weeds.

Crop rotation. The practice of alternating the annual crops grown on a specific field in a planned pattern or sequence in successive crop years so that crops of the same species or family are not grown repeatedly without interruption on the same field. Perennial cropping systems employ means such as alley cropping, intercropping, and hedgerows to introduce biological diversity in lieu of crop rotation.

Crop year. That normal growing season for a crop as determined by the Secretary.

Cultivation. Digging up or cutting the soil to prepare a seed bed; control weeds; aerate the soil; or work organic matter, crop residues, or fertilizers into the soil.

Cultural methods. Methods used to enhance crop health and prevent weed, pest, or disease problems without the use of substances; examples include the selection of appropriate varieties and planting sites; proper timing and density of plantings; irrigation; and extending a growing season by manipulating the microclimate with green houses, cold frames, or wind breaks.

Detectable residue. The amount or presence of chemical residue or sample component that can be reliably observed or found in the sample matrix by current approved analytical methodology.

Disease vectors. Plants or animals that harbor or transmit disease organisms or pathogens which may attack crops or livestock.

Drift. The physical movement of prohibited substances from the intended target site onto an organic operation or portion thereof.

Emergency pest or disease treatment program. A mandatory program authorized by a Federal, State, or local agency for the purpose of controlling or eradicating a pest or disease.

Employee. Any person providing paid or volunteer services for a certifying agent.

Excluded methods. A variety of methods used to genetically modify organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic production. Such methods include cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology (including gene deletion, gene doubling, introducing a foreign gene, and changing the positions of genes when achieved by recombinant DNA technology). Such methods do not include the use of traditional breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture.

Feed. Edible materials which are consumed by livestock for their nutritional value. Feed may be concentrates (grains) or roughages (hay, silage, fodder). The term, "feed," encompasses all agricultural commodities, including pasture ingested by livestock for nutritional purposes.

Feed additive. A substance added to feed in micro quantities to fulfill a specific nutritional need; i.e., essential nutrients in the form of amino acids, vitamins, and minerals.

Feed Supplement. A combination of feed nutrients added to livestock feed to improve the nutrient balance or performance of the total ration and intended to be:

(1) Diluted with other feeds when fed to livestock;

(2) Offered free choice with other parts of the ration if separately available; or

(3) Further diluted and mixed to produce a complete feed.

Fertilizer. A single or blended substance containing one or more recognized plant nutrient(s) which is used primarily for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth.

Field. An area of land identified as a discrete unit within a production operation.

Forage. Vegetative material in a fresh, dried, or ensiled state (pasture, hay, or silage), which is fed to livestock.

Governmental entity. Any domestic government, tribal government, or foreign governmental subdivision providing certification services.

Handle. To sell, process, or package agricultural products, except such term shall not include the sale, transportation, or delivery of crops or livestock by the producer thereof to a handler.

Handler. Any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products.

Handling operation. Any operation or portion of an operation (except final retailers of agricultural products that do not process agricultural products) that receives or otherwise acquires agricultural products and processes, packages, or stores such products.

Immediate family. The spouse, minor children, or blood relatives who reside in the immediate household of a certifying agent or an employee, inspector, contractor, or other personnel of the certifying agent. For the purpose of this part, the interest of a spouse, minor child, or blood relative who is a resident of the immediate household of a certifying agent or an employee, inspector, contractor, or other personnel of the certifying agent shall be considered to be an interest of the certifying agent or an employee, inspector, contractor, or other personnel of the certifying agent.

Inert ingredient. Any substance (or group of substances with similar chemical structures if

designated by the Environmental Protection Agency) other than an active ingredient which is intentionally included in any pesticide product (40 CFR 152.3(m)).

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 the principal display panel, unless another section of the label is designated as the information panel because of package size or other package attributes (e.g., irregular shape with one usable surface).

Ingredient. Any substance used in the preparation of an agricultural product that is still present in the final commercial product as consumed.

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

Inspector. Any person retained or used by a certifying agent to conduct inspections of certification applicants or certified production or handling operations.

Inspection. The act of examining and evaluating the production or handling operation of an applicant for certification or certified operation to determine compliance with the Act and the regulations in this part.

Label. A display of written, printed, or graphic material on the immediate container of an agricultural product or any such material affixed to any agricultural product or affixed to a bulk container containing an agricultural product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

Labeling. All written, printed, or graphic material accompanying an agricultural product at any time or written, printed, or graphic material about the agricultural product displayed at

retail stores about the product.

Livestock. Any cattle, sheep, goat, swine, poultry, or equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; or other nonplant life, except such term shall not include aquatic animals or bees for the production of food, fiber, feed, or other agricultural-based consumer products.

Lot. Any number of containers which contain an agricultural product of the same kind located in the same conveyance, warehouse, or packing house and which are available for inspection at the same time.

Manure. Feces, urine, other excrement, and bedding produced by livestock that has not been composted.

Market information. Any written, printed, audiovisual, or graphic information, including advertising, pamphlets, flyers, catalogues, posters, and signs, distributed, broadcast, or made available outside of retail outlets that are used to assist in the sale or promotion of a product.

Mulch. Any nonsynthetic material, such as wood chips, leaves, or straw, or any synthetic material included on the National List for such use, such as newspaper or plastic that serves to suppress weed growth, moderate soil temperature, or conserve soil moisture.

Narrow range oils. Petroleum derivatives, predominately of paraffinic and napthenic fractions with 50 percent boiling point (10 mm Hg) between 415°F and 440°F.

National List. A list of allowed and prohibited substances as provided for in the Act.

National Organic Program (NOP). The program authorized by the Act for the purpose of implementing its provisions.

National Organic Standards Board (NOSB). A board established by the Secretary under 7

U.S.C. 6518 to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of the National Organic Program.

Natural resources of the operation. The physical, hydrological, and biological features of a production operation, including soil, water, wetlands, woodlands, and wildlife.

Nonagricultural substance. A substance that is not a product of agriculture, such as a mineral or a bacterial culture, that is used as an ingredient in an agricultural product. For the purposes of this part, a nonagricultural ingredient also includes any substance, such as gums, citric acid, or pectin, that is extracted from, isolated from, or a fraction of an agricultural product so that the identity of the agricultural product is unrecognizable in the extract, isolate, or fraction.

Nonsynthetic (natural). A substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic process as defined in section 6502(21) of the Act (7 U.S.C. 6502(21)). For the purposes of this part, nonsynthetic is used as a synonym for natural as the term is used in the Act.

Nontoxic. Not known to cause any adverse physiological effects in animals, plants, humans, or the environment.

Nonretail container. Any container used for shipping or storage of an agricultural product that is not used in the retail display or sale of the product.

Organic. A labeling term that refers to an agricultural product produced in accordance with the Act and the regulations in this part.

Organic matter. The remains, residues, or waste products of any organism.

Organic production. A production system that is managed in accordance with the Act and

regulations in this part to respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity.

Organic system plan. A plan of management of an organic production or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in the Act and the regulations in subpart C of this part.

Pasture. Land used for livestock grazing that is managed to provide feed value and maintain or improve soil, water, and vegetative resources.

Peer review panel. A panel of individuals who have expertise in organic production and handling methods and certification procedures and who are appointed by the Administrator to assist in evaluating applicants for accreditation as certifying agents.

Person. An individual, partnership, corporation, association, cooperative, or other entity.

Pesticide. Any substance which alone, in chemical combination, or in any formulation with one or more substances is defined as a pesticide in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u) et seq).

Petition. A request to amend the National List that is submitted by any person in accordance with this part.

Planting stock. Any plant or plant tissue other than annual seedlings but including rhizomes, shoots, leaf or stem cuttings, roots, or tubers, used in plant production or propagation.

Practice standard. The guidelines and requirements through which a production or handling operation implements a required component of its production or handling organic system

plan. A practice standard includes a series of allowed and prohibited actions, materials, and conditions to establish a minimum level performance for planning, conducting, and maintaining a function, such as livestock health care or facility pest management, essential to an organic operation.

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.

Private entity. Any domestic or foreign nongovernmental for-profit or not-for-profit organization providing certification services.

Processing. Cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, slaughtering, cutting, fermenting, distilling, eviscerating, preserving, dehydrating, freezing, chilling, or otherwise manufacturing and includes the packaging, canning, jarring, or otherwise enclosing food in a container.

Processing aid. (a) substance that is added to a food during the processing of such food but is removed in some manner from the food before it is packaged in its finished form; (b) a substance that is added to a food during processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; and (c) a substance that is added to a food for its technical or functional effect in the processing but is present in the finished food at insignificant levels and does not have any technical or functional effect in that food.

Producer. A person who engages in the business of growing or producing food, fiber, feed, and other agricultural-based consumer products.

Production lot number/identifier. Identification of a product based on the production

sequence of the product showing the date, time, and place of production used for quality control purposes.

Prohibited substance. A substance the use of which in any aspect of organic production or handling is prohibited or not provided for in the Act or the regulations of this part.

Records. Any information in written, visual, or electronic form that documents the activities undertaken by a producer, handler, or certifying agent to comply with the Act and regulations in this part.

Residue testing. An official or validated analytical procedure that detects, identifies, and measures the presence of chemical substances, their metabolites, or degradations products in or on raw or processed agricultural products.

Responsibly connected. Any person who is a partner, officer, director, holder, manager, or owner of 10 percent or more of the voting stock of an applicant or a recipient of certification or accreditation.

Retail food establishment. A restaurant; delicatessen; bakery; grocery store; or any retail outlet with an in-store restaurant, delicatessen, bakery, salad bar, or other eat-in or carry-out service of processed or prepared raw and ready-to-eat-food.

Routine use of parasiticide. The regular, planned, or periodic use of parasiticides.

Secretary. The Secretary of Agriculture or a representative to whom authority has been delegated to act in the Secretary's stead.

Sewage sludge. A solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes but is not limited to: domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment

processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

Slaughter stock. Any animal that is intended to be slaughtered for consumption by humans or other animals.

Split operation. An operation that produces or handles both organic and nonorganic agricultural products.

Soil and water quality. Observable indicators of the physical, chemical, or biological condition of soil and water, including the presence of environmental contaminants.

State. Any of the several States of the United States of America, its territories, the District of Columbia, and the Commonwealth of Puerto Rico.

State certifying agent. A certifying agent accredited by the Secretary under the National Organic Program and operated by the State for the purposes of certifying organic production and handling operations in the State.

State organic program (SOP). A State program that meets the requirements of section 6506 of the Act, is approved by the Secretary, and is designed to ensure that a product that is sold or labeled as organically produced under the Act is produced and handled using organic methods.

State organic program's governing State official. The chief executive official of a State or, in the case of a State that provides for the statewide election of an official to be responsible solely for the administration of the agricultural operations of the State, such official who administers a State organic certification program.

Synthetic. A substance that is formulated or manufactured by a chemical process or by a

process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

Tolerance. The maximum legal level of a pesticide chemical residue in or on a raw or processed agricultural commodity or processed food.

Transplant. A seedling which has been removed from its original place of production, transported, and replanted.

Unavoidable residual environmental contamination (UREC). Background levels of naturally occurring or synthetic chemicals that are present in the soil or present in organically produced agricultural products that are below established tolerances.

Wild crop. Any plant or portion of a plant that is collected or harvested from a site that is not maintained under cultivation or other agricultural management.

Subpart B - Applicability

§ 205.100 What has to be certified.

(a) Except for operations exempt or excluded in § 205.101, each production or handling operation or specified portion of a production or handling operation that produces or handles crops, livestock, livestock products, or other agricultural products that are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part.

(b) Any production or handling operation or specified portion of a production or handling operation that has been already certified by a certifying agent on the date that the certifying agent

receives its accreditation under this part shall be deemed to be certified under the Act until the operation's next anniversary date of certification. Such recognition shall only be available to those operations certified by a certifying agent that receives its accreditation within 18 months from the effective date of this final rule.

(c) Any 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 governing State official, or an accredited certifying agent shall be subject to the provisions of section 1001 of title 18, United States Code.

§ 205.101 Exemptions and exclusions from certification.

(a) Exemptions.

(1) A production or handling operation that sells agricultural products as "organic" but whose gross agricultural income from organic sales totals $5,000 or less annually is exempt from certification under subpart E of this part and from submitting an organic system plan for acceptance or approval under § 205.201 but must comply with the applicable organic production and handling requirements of subpart C of this part and the labeling requirements of § 205.310. The products from such operations shall not be used as ingredients identified as organic in processed products produced by another handling operation.

(2) A handling operation that is a retail food establishment or portion of a retail food establishment that handles organically produced agricultural products but does not process them is exempt from the requirements in this part.

(3) A handling operation or portion of a handling operation that only handles agricultural products that contain less than 70 percent organic ingredients by total weight of the finished product (excluding water and salt) is exempt from the requirements in this part, except:

(i) The provisions for prevention of contact of organic products with prohibited substances set forth in § 205.272 with respect to any organically produced ingredients used in an agricultural product;

(ii) The labeling provisions of §§ 205.305 and 205.310; and

(iii) The recordkeeping provisions in paragraph (c) of this section.

(4) A handling operation or portion of a handling operation that only identifies organic ingredients on the information panel is exempt from the requirements in this part, except:

(i) The provisions for prevention of contact of organic products with prohibited substances set forth in § 205.272 with respect to any organically produced ingredients used in an agricultural product;

(ii) The labeling provisions of §§ 205.305 and 205.310; and

(iii) The recordkeeping provisions in paragraph (c) of this section.

(b) Exclusions.

(1) A handling operation or portion of a handling operation is excluded from the requirements of this part, except for the requirements for the prevention of commingling and contact with prohibited substances as set forth in § 205.272 with respect to any organically produced products, if such operation or portion of the operation only sells organic agricultural products labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” that:

(i) Are packaged or otherwise enclosed in a container prior to being received or acquired by the operation; and

(ii) Remain in the same package or container and are not otherwise processed while in the control of the handling operation.

(2) A handling operation that is a retail food establishment or portion of a retail food establishment that processes, on the premises of the retail food establishment, raw and ready-to-eat food from agricultural products that were previously labeled as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" is excluded from the requirements in this part, except:

(i) The requirements for the prevention of contact with prohibited substances as set forth in § 205.272; and

(ii) The labeling provisions of § 205.310.

(c) Records to be maintained by exempt operations.

(1) Any handling operation exempt from certification pursuant to paragraph (a)(3) or (a)(4) of this section must maintain records sufficient to:

(i) Prove that ingredients identified as organic were organically produced and handled; and

(ii) Verify quantities produced from such ingredients.

(2) Records must be maintained for no less than 3 years beyond their creation and the operations must allow representatives of the Secretary and the applicable State organic programs' governing State official access to these records for inspection and copying during normal business hours to determine compliance with the applicable regulations set forth in this part.

§ 205.102 Use of the term, "organic."

Any agricultural product that is sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must be:

(a) Produced in accordance with the requirements specified in § 205.101 or §§ 205.202 through 205.207 or §§ 205.236 through 205.239 and all other applicable requirements of part 205; and

(b) Handled in accordance with the requirements specified in § 205.101 or §§ 205.270 through 205.272 and all other applicable requirements of this part 205.

§ 205.103 Recordkeeping by certified operations.

(a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))."

(b) Such records must:

(1) Be adapted to the particular business that the certified operation is conducting;

(2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited;

(3) Be maintained for not less than 5 years beyond their creation; and

(4) Be sufficient to demonstrate compliance with the Act and the regulations in this part.

(c) The certified operation must make such records available for inspection and copying during normal business hours by authorized representatives of the Secretary, the applicable State program's governing State official, and the certifying agent.

§ 205.104 [Reserved]

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

To be sold or labeled as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))," the product must be produced and handled without the use of:

(a) Synthetic substances and ingredients, except as provided in § 205.601 or § 205.603;

(b) Nonsynthetic substances prohibited in § 205.602 or § 205.604;

(c) Nonagricultural substances used in or on processed products, except as otherwise provided in § 205.605;

(d) Nonorganic agricultural substances used in or on processed products, except as otherwise provided in § 205.606;

(e) Excluded methods, except for vaccines, Provided, That, the vaccines are approved in accordance with § 205.600(a);

(f) Ionizing radiation, as described in Food and Drug Administration regulation, 21 CFR 179.26; and

(g) Sewage sludge.

§§ 205.106-205.199 [Reserved]

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;

(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 recordkeeping system implemented to comply with the requirements established in § 205.103;

(5) A description of the management practices and physical barriers established to prevent commingling of organic and nonorganic products on a split operation and to 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, labeled, 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; 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.

§ 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;

(2) Composted plant and animal materials produced though 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

(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.

(3) Uncomposted 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;

(3) A mined substance of high solubility, Provided, That, the substance is used in compliance with the conditions established on the National List of nonsynthetic materials prohibited for crop production;

(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 nonsynthetic substances prohibited for use in organic crop production; 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.

(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) Nonorganically 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) Nonorganically 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;

(3) Nonorganically 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) Nonorganically produced planting stock to be used to produce a perennial crop may be sold, labeled, 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 phytosanitary regulations.

§ 205.205 Crop rotation practice standard.

The producer must implement a crop rotation including but not limited to sod, 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) Nonsynthetic controls such as lures, traps, and repellents.

(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 nonsynthetic biological, botanical, or mineral inputs.

(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, labeled, 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.

§§ 205.208 - 205.235 [Reserved]

§ 205.236 Origin of livestock.

(a) Livestock products that are to be sold, labeled, 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;

(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, labeled, or represented as organic, Except, That, when an entire, distinct herd is converted to organic production, the producer may:

(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

(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.

(3) Breeder stock. Livestock used as breeder stock may be brought from a nonorganic 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.

(b) The following are prohibited:

(1) Livestock or edible livestock products that are removed from an organic operation and subsequently managed on a nonorganic operation may be not sold, labeled, 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, labeled, 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 nonedible 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, nonsynthetic substances and synthetic substances allowed under § 205.603 may be used as feed additives and supplements.

(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 fiber (ruminants);

(3) Establishment of appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites;

(4) Provision of conditions which allow for exercise, freedom of movement, and reduction of stress appropriate to the species;

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

(6) Administration of vaccines and other veterinary biologics.

(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, labeled, 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, labeled, or represented as organic.

(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 nonsynthetic 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, labeled, or represented as organically produced.

§ 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 behaviors, and opportunity to exercise;

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

(iii) Reduction of potential for livestock injury;

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

(1) Inclement weather;

(2) The animal's stage of production;

(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 optimizes recycling of nutrients.

§§ 205.240 - 205.269 [Reserved]

§ 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) Nonagricultural substances allowed under § 205.605 and nonorganically produced agricultural products allowed under § 205.606 may be used:

(1) In or on a processed agricultural product intended to be sold, labeled, 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, labeled, 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, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” or in or on any ingredients labeled 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, nonorganic ingredients in products labeled “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 nonsynthetic or synthetic substances consistent with the National List.

(c) If the practices provided for in paragraphs (a) and (b) of this section are not effective to prevent or control pests, a nonsynthetic or synthetic substance consistent with the National List may be applied.

(d) If the practices provided for in paragraphs (a), (b), and © 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.

(e) The handler of an organic handling operation who applies a nonsynthetic 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.

(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 Commingling and contact with prohibited substance prevention practice standard.

(a) The handler of an organic handling operation must implement measures necessary to prevent the commingling of organic and nonorganic 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 labeled 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 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.

§§ 205.291-205.299 [Reserved]

Subpart D - Labels, Labeling, and Market Information

§ 205.300 Use of the term, "organic."

(a) The term, "organic," may only be used on labels and in labeling 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 nonorganic ingredient in the product.

(b) Products for export, produced and certified to foreign national organic standards or foreign contract buyer requirements, may be labeled in accordance with the organic labeling requirements of the receiving country or contract buyer: Provided, That, the shipping containers and shipping documents meet the labeling 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 labeled pursuant to this subpart D.

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

§ 205.301 Product composition.

(a) Products sold, labeled, or represented as "100 percent organic." A raw or processed agricultural product sold, labeled, or represented as "100 percent organic" must contain (by weight or fluid volume, excluding water and salt) 100 percent organically produced ingredients. If labeled as organically produced, such product must be labeled pursuant to § 205.303.

(b) Products sold, labeled, or represented as "organic." A raw or processed agricultural product sold, labeled, 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 nonagricultural substances or nonorganically produced agricultural products produced consistent with the National List in subpart G of this part. If labeled as organically produced, such product must be labeled pursuant to § 205.303.

(c) Products sold, labeled, or represented as "made with organic (specified ingredients or food group(s))." Multiingredient agricultural product sold, labeled, 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). Nonorganic ingredients may be produced without regard to paragraphs (4), (5), (6), and (7) of § 205.301(f). If labeled as containing organically produced ingredients or food groups, such product must be labeled pursuant to § 205.304.

(d) Products with less than 70 percent organically produced ingredients. The organic

ingredients in multiingredient 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 nonorganic ingredients may be produced and handled without regard to the requirements of this part. Multiingredient 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, labeled, 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.

(2) A raw or processed livestock feed product sold, labeled, or represented as "organic” must be produced in conformance with § 205.237.

(f) All products labeled 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 labeled 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 labeled “made with organic grapes”;

(6) Be produced using nonorganic ingredients when organic ingredients are available; or

(7) Include organic and nonorganic 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, labeled, 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:

(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.

(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.

§ 205.303 Packaged products labeled "100 percent organic" or "organic."

(a) Agricultural products in packages described in § 205.301(a) and (b) may display, on the principal display panel, information panel, and any other panel of the package and on any labeling or market information concerning the product, the following:

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

(2) For products labeled "organic," the percentage of organic ingredients in the product; (The size of the percentage statement must not exceed one-half the size of the largest type size on the panel on which the statement is displayed and must appear in its entirety in the same type size, style, and color without highlighting.)

(3) The term, "organic," to identify the organic ingredients in multiingredient products labeled "100 percent organic";

(4) The USDA seal; and/or

(5) The seal, logo, or other identifying mark of the certifying agent which certified the production or handling operation producing the finished product and any other certifying agent which certified production or handling operations producing raw organic product or organic ingredients used in the finished product: Provided, That, the handler producing the finished product maintain records, pursuant to this part, verifying organic certification of the operations producing such ingredients, and: Provided further, That, such seals or marks are not individually displayed more prominently than the USDA seal.

(b) Agricultural products in packages described in § 205.301(a) and (b) must:

(1) For products labeled "organic," identify each organic ingredient in the ingredient

statement with the word, “organic,” or with an asterisk or other reference mark which is defined below the ingredient statement to indicate the ingredient is organically produced. Water or salt included as ingredients cannot be identified as organic.

(2) 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, identify the name of the certifying agent that certified the handler of the finished product and may display the business address, Internet address, or telephone number of the certifying agent in such label.

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

(a) Agricultural products in packages described in § 205.301(c) may display on the principal display panel, information panel, and any other panel and on any labeling or market information concerning the product:

(1) The statement:

(i) “Made with organic (specified ingredients)”: Provided, That, the statement does not list more than three organically produced ingredients; or

(ii) “Made with organic (specified food groups)”: Provided, That, the statement does not list more than three of the following food groups: beans, fish, fruits, grains, herbs, meats, nuts, oils, poultry, seeds, spices, sweeteners, and vegetables or processed milk products; and, Provided Further, That, all ingredients of each listed food group in the product must be organically produced; and

(iii) Which appears in letters that do not exceed one-half the size of the largest type size on the panel and which appears in its entirety in the same type size, style, and color without

highlighting.

(2) The percentage of organic ingredients in the product. The size of the percentage statement must not exceed one-half the size of the largest type size on the panel on which the statement is displayed and must appear in its entirety in the same type size, style, and color without highlighting.

(3) The seal, logo, or other identifying mark of the certifying agent that certified the handler of the finished product.

(b) Agricultural products in packages described in § 205.301(c) must:

(1) In the ingredient statement, identify each organic ingredient with the word, "organic," or with an asterisk or other reference mark which is defined below the ingredient statement to indicate the ingredient is organically produced. Water or salt included as ingredients cannot be identified as organic.

(2) 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, identify the name of the certifying agent that certified the handler of the finished product: Except, That, the business address, Internet address, or telephone number of the certifying agent may be included in such label.

(c) Agricultural products in packages described in § 205.301(c) must not display the USDA seal.

§ 205.305 Multiingredient packaged products with less than 70 percent organically produced ingredients.

(a) An agricultural product with less than 70 percent organically produced ingredients

may only identify the organic content of the product by:

(1) Identifying each organically produced ingredient in the ingredient statement with the word, “organic,” or with an asterisk or other reference mark which is defined below the ingredient statement to indicate the ingredient is organically produced, and

(2) If the organically produced ingredients are identified in the ingredient statement, displaying the product’s percentage of organic contents on the information panel.

(b) Agricultural products with less than 70 percent organically produced ingredients must not display:

(1) The USDA seal; and

(2) Any certifying agent seal, logo, or other identifying mark which represents organic certification of a product or product ingredients.

§ 205.306 Labeling 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.

(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 labeling requirements as applicable.

§ 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))."

(a) Nonretail containers used only to ship or store raw or processed agricultural product labeled as containing organic ingredients may display the following terms or marks:

(1) The name and contact information of the certifying agent which certified the handler which assembled the final product;

(2) Identification of the product as organic;

(3) Special handling instructions needed to maintain the organic integrity of the product;

(4) The USDA seal;

(5) The seal, logo, or other identifying mark of the certifying agent that certified the organic production or handling operation that produced or handled the finished product.

(b) Nonretail containers used to ship or store raw or processed agricultural product

labeled as containing organic ingredients must display the production lot number of the product if applicable.

(c) Shipping containers of domestically produced product labeled as organic intended for export to international markets may be labeled in accordance with any shipping container labeling requirements of the foreign country of destination or the container labeling specifications of a foreign contract buyer: Provided, That, the shipping containers and shipping documents accompanying such organic products are clearly marked "For Export Only" and: Provided further, That, proof of such container marking and export must be maintained by the handler in accordance with recordkeeping requirements for exempt and excluded operations under § 205.101.

§ 205.308 Agricultural products in other than packaged form at the point of retail sale that are sold, labeled, 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, labeling, 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, labeling, 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, labeled, 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, labeling, 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 labeled 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 multiingredient 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.

§ 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.

§§ 205.312-205.399 [Reserved]

Subpart E - Certification

§ 205.400 General requirements for certification.

A person seeking to receive or maintain organic certification under the regulations in this part must:

(a) Comply with the Act and applicable organic production and handling regulations of this part;

(b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent as provided for in § 205.200;

(c) Permit on-site inspections with complete access to the production or handling operation, including noncertified production and handling areas, structures, and offices by the certifying agent as provided for in § 205.403;

(d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow authorized representatives of the Secretary, the applicable State organic program's governing State official, and the certifying agent access to such records during normal business hours for review and copying to determine compliance with the Act and the regulations in this part, as provided for in § 205.104;

(e) Submit the applicable fees charged by the certifying agent; and

(f) Immediately notify the certifying agent concerning any:

(1) Application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation; and

(2) Change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and the regulations in this part.

§ 205.401 Application for Certification.

A person seeking certification of a production or handling operation under this subpart must submit an application for certification to a certifying agent. The application must include the following information:

(a) An organic production or handling system plan, as required in § 205.200;

(b) The name of the person completing the application; the applicant's business name, address, and telephone number; and, when the applicant is a corporation, the name, address, and telephone number of the person authorized to act on the applicant's behalf;

(c) The name(s) of any organic certifying agent(s) to which application has previously been made; the year(s) of application; the outcome of the application(s) submission, including, when available, a copy of any notification of noncompliance or denial of certification issued to the applicant for certification; and a description of the actions taken by the applicant to correct the noncompliances noted in the notification of noncompliance, including evidence of such correction; and

(d) Other information necessary to determine compliance with the Act and the regulations in this part.

§ 205.402 Review of application.

(a) Upon acceptance of an application for certification, a certifying agent must:

(1) Review the application to ensure completeness pursuant to § 205.401;

(2) Determine by a review of the application materials whether the applicant appears to comply or may be able to comply with the applicable requirements of subpart C of this part;

(3) Verify that an applicant who previously applied to another certifying agent and received a notification of noncompliance or denial of certification, pursuant to § 205.405, has submitted documentation to support the correction of any noncompliances identified in the notification of noncompliance or denial of certification, as required in § 205.405(e); and

(4) Schedule an on-site inspection of the operation to determine whether the applicant qualifies for certification if the review of application materials reveals that the production or handling operation may be in compliance with the applicable requirements of subpart C of this part.

(b) The certifying agent shall within a reasonable time: (1) Review the application materials received and communicate its findings to the applicant;

(2) Provide the applicant with a copy of the on-site inspection report, as approved by the certifying agent, for any on-site inspection performed; and

(3) Provide the applicant with a copy of the test results for any samples taken by an inspector.

(c) The applicant may withdraw its application at any time. An applicant who withdraws its application shall be liable for the costs of services provided up to the time of withdrawal of its application. An applicant that voluntarily withdrew its application prior to the issuance of a notice

of noncompliance will not be issued a notice of noncompliance. Similarly, an applicant that voluntarily withdrew its application prior to the issuance of a notice of certification denial will not be issued a notice of certification denial.

§ 205.403 On-site inspections.

(a) On-site inspections. (1) A certifying agent must conduct an initial on-site inspection of each production unit, facility, and site that produces or handles organic products and that is included in an operation for which certification is requested. An on-site inspection shall be conducted annually thereafter for each certified operation that produces or handles organic products for the purpose of determining whether to approve the request for certification or whether the certification of the operation should continue.

(2) (i) A certifying agent may conduct additional on-site inspections of applicants for certification and certified operations to determine compliance with the Act and the regulations in this part.

(ii) The Administrator or State organic program's governing State official may require that additional inspections be performed by the certifying agent for the purpose of determining compliance with the Act and the regulations in this part.

(iii) Additional inspections may be announced or unannounced at the discretion of the certifying agent or as required by the Administrator or State organic program's governing State official.

(b) Scheduling. (1) The initial on-site inspection must be conducted within a reasonable time following a determination that the applicant appears to comply or may be able to comply with the requirements of subpart C of this part: Except, That, the initial inspection may be

delayed for up to 6 months to comply with the requirement that the inspection be conducted when the land, facilities, and activities that demonstrate compliance or capacity to comply can be observed.

(2) All on-site inspections must be conducted when an authorized representative of the operation who is knowledgeable about the operation is present and at a time when land, facilities, and activities that demonstrate the operation's compliance with or capability to comply with the applicable provisions of subpart C of this part can be observed, except that this requirement does not apply to unannounced on-site inspections.

(c) Verification of information. The on-site inspection of an operation must verify:

(1) The operation's compliance or capability to comply with the Act and the regulations in this part;

(2) That the information, including the organic production or handling system plan, provided in accordance with §§ 205.401, 205.406, and 205.200, accurately reflects the practices used or to be used by the applicant for certification or by the certified operation;

(3) That prohibited substances have not been and are not being applied to the operation through means which, at the discretion of the certifying agent, may include the collection and testing of soil; water; waste; seeds; plant tissue; and plant, animal, and processed products samples.

(d) Exit interview. The inspector must conduct an exit interview with an authorized representative of the operation who is knowledgeable about the inspected operation to confirm the accuracy and completeness of inspection observations and information gathered during the on-site inspection. The inspector must also address the need for any additional information as well as

any issues of concern.

(e) Documents to the inspected operation. (1) At the time of the inspection, the inspector shall provide the operation's authorized representative with a receipt for any samples taken by the inspector. There shall be no charge to the inspector for the samples taken.

(2) A copy of the on-site inspection report and any test results will be sent to the inspected operation by the certifying agent.

§ 205.404 Granting certification.

(a) Within a reasonable time after completion of the initial on-site inspection, a certifying agent must review the on-site inspection report, the results of any analyses for substances conducted, and any additional information requested from or supplied by the applicant. If the certifying agent determines that the organic system plan and all procedures and activities of the applicant's operation are in compliance with the requirements of this part and that the applicant is able to conduct operations in accordance with the plan, the agent shall grant certification. The certification may include requirements for the correction of minor noncompliances within a specified time period as a condition of continued certification.

(b) The certifying agent must issue a certificate of organic operation which specifies the:

(1) Name and address of the certified operation;

(2) Effective date of certification;

(3) Categories of organic operation, including crops, wild crops, livestock, or processed products produced by the certified operation; and

(4) Name, address, and telephone number of the certifying agent.

(c) Once certified, a production or handling operation's organic certification continues in

effect until surrendered by the organic operation or suspended or revoked by the certifying agent, the State organic program's governing State official, or the Administrator.

§ 205.405 Denial of certification.

(a) When the certifying agent has reason to believe, based on a review of the information specified in § 205.402 or § 205.404, that an applicant for certification is not able to comply or is not in compliance with the requirements of this part, the certifying agent must provide a written notification of noncompliance to the applicant. When correction of a noncompliance is not possible, a notification of noncompliance and a notification of denial of certification may be combined in one notification. The notification of noncompliance shall provide:

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

(b) Upon receipt of such notification of noncompliance, the applicant may:

(1) Correct noncompliances and submit a description of the corrective actions taken with supporting documentation to the certifying agent;

(2) Correct noncompliances and submit a new application to another certifying agent: Provided, That, the applicant must include a complete application, the notification of noncompliance received from the first certifying agent, and a description of the corrective actions taken with supporting documentation; or

(3) Submit written information to the issuing certifying agent to rebut the noncompliance described in the notification of noncompliance.

(c) After issuance of a notification of noncompliance, the certifying agent must:

(1) Evaluate the applicant's corrective actions taken and supporting documentation submitted or the written rebuttal, conduct an on-site inspection if necessary, and

(i) When the corrective action or rebuttal is sufficient for the applicant to qualify for certification, issue the applicant an approval of certification pursuant to § 205.404; or

(ii) When the corrective action or rebuttal is not sufficient for the applicant to qualify for certification, issue the applicant a written notice of denial of certification.

(2) Issue a written notice of denial of certification to an applicant who fails to respond to the notification of noncompliance.

(3) Provide notice of approval or denial to the Administrator, pursuant to § 205.501(a)(14).

(d) A notice of denial of certification must state the reason(s) for denial and the applicant's right to:

(1) Reapply for certification pursuant to §§ 205.401 and 205.405(e);

(2) Request mediation pursuant to § 205.663 or, if applicable, pursuant to a State organic program; or

(3) File an appeal of the denial of certification pursuant to § 205.681 or, if applicable, pursuant to a State organic program.

(e) An applicant for certification who has received a written notification of noncompliance or a written notice of denial of certification may apply for certification again at any time with any certifying agent, in accordance with §§ 205.401 and 205.405(e). When such applicant submits a new application to a certifying agent other than the agent who issued the

notification of noncompliance or notice of denial of certification, the applicant for certification must include a copy of the notification of noncompliance or notice of denial of certification and a description of the actions taken, with supporting documentation, to correct the noncompliances noted in the notification of noncompliance.

(f) A certifying agent who receives a new application for certification, which includes a notification of noncompliance or a notice of denial of certification, must treat the application as a new application and begin a new application process pursuant to § 205.402.

(g) Notwithstanding paragraph (a) of this section, if a certifying agent has reason to believe that an applicant for certification has willfully made a false statement or otherwise purposefully misrepresented the applicant's operation or its compliance with the certification requirements pursuant to this part, the certifying agent may deny certification pursuant to paragraph (c)(1)(ii) of this section without first issuing a notification of noncompliance.

§ 205.406 Continuation of certification.

(a) To continue certification, a certified operation must annually pay the certification fees and submit the following information, as applicable, to the certifying agent:

(1) An updated organic production or handling system plan which includes:

(i) A summary statement, supported by documentation, detailing any deviations from, changes to, modifications to, or other amendments made to the previous year's organic system plan during the previous year; and

(ii) Any additions or deletions to the previous year's organic system plan, intended to be undertaken in the coming year, detailed pursuant to § 205.200;

(2) Any additions to or deletions from the information required pursuant to § 205.401(b);

(3) An update on the correction of minor noncompliances previously identified by the certifying agent as requiring correction for continued certification; and

(4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.

(b) Following the receipt of the information specified in paragraph (a) of this section, the certifying agent shall within a reasonable time arrange and conduct an on-site inspection of the certified operation pursuant to § 205.403: Except, That, when it is impossible for the certifying agent to conduct the annual on-site inspection following receipt of the certified operation's annual update of information, the certifying agent may allow continuation of certification and issue an updated certificate of organic operation on the basis of the information submitted and the most recent on-site inspection conducted during the previous 12 months: Provided, That, the annual on-site inspection, required pursuant to § 205.403, is conducted within the first 6 months following the certified operation's scheduled date of annual update.

(c) If the certifying agent has reason to believe, based on the on-site inspection and a review of the information specified in § 205.404, that a certified operation is not complying with the requirements of the Act and the regulations in this part, the certifying agent shall provide a written notification of noncompliance to the operation in accordance with § 205.662.

(d) If the certifying agent determines that the certified operation is complying with the Act and the regulations in this part and that any of the information specified on the certificate of organic operation has changed, the certifying agent must issue an updated certificate of organic operation pursuant to § 205.404(b).

§§ 205.407-205.499 [Reserved]

Subpart F - Accreditation of Certifying Agents

§ 205.500 Areas and duration of accreditation.

(a) The Administrator shall accredit a qualified domestic or foreign applicant in the areas of crops, livestock, wild crops, or handling or any combination thereof to certify a domestic or foreign production or handling operation as a certified operation.

(b) Accreditation shall be for a period of 5 years from the date of approval of accreditation pursuant to § 205.506.

(c) In lieu of accreditation under paragraph (a) of this section, USDA will accept a foreign certifying agent's accreditation to certify organic production or handling operations if:

(1) USDA determines, upon the request of a foreign government, that the standards under which the foreign government authority accredited the foreign certifying agent meet the requirements of this part; or

(2) The foreign government authority that accredited the foreign certifying agent acted under an equivalency agreement negotiated between the United States and the foreign government.

§ 205.501 General requirements for accreditation.

(a) A private or governmental entity accredited as a certifying agent under this subpart must:

(1) Have sufficient expertise in organic production or handling techniques to fully comply with and implement the terms and conditions of the organic certification program established under the Act and the regulations in this part;

(2) Demonstrate the ability to fully comply with the requirements for accreditation set

forth in this subpart;

(3) Carry out the provisions of the Act and the regulations in this part, including the provisions of §§ 205.402 through 205.406 and § 205.670;

(4) Use a sufficient number of adequately trained personnel, including inspectors and certification review personnel, to comply with and implement the organic certification program established under the Act and the regulations in subpart E of this part;

(5) Ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, and decision-making responsibilities have sufficient expertise in organic production or handling techniques to successfully perform the duties assigned.

(6) Conduct an annual performance evaluation of all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and implement measures to correct any deficiencies in certification services;

(7) Have an annual program review of its certification activities conducted by the certifying agent's staff, an outside auditor, or a consultant who has expertise to conduct such reviews and implement measures to correct any noncompliances with the Act and the regulations in this part that are identified in the evaluation;

(8) Provide sufficient information to persons seeking certification to enable them to comply with the applicable requirements of the Act and the regulations in this part;

(9) Maintain all records pursuant to § 205.510(b) and make all such records available for inspection and copying during normal business hours by authorized representatives of the Secretary and the applicable State organic program's governing State official;

(10) Maintain strict confidentiality with respect to its clients under the applicable organic certification program and not disclose to third parties (with the exception of the Secretary or the applicable State organic program's governing State official or their authorized representatives) any business-related information concerning any client obtained while implementing the regulations in this part, except as provided for in § 205.504(b)(5);

(11) Prevent conflicts of interest by: (i) Not certifying a production or handling operation if the certifying agent or a responsibly connected party of such certifying agent has or has held a commercial interest in the production or handling operation, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;

(ii) Excluding any person, including contractors, with conflicts of interest from work, discussions, and decisions in all stages of the certification process and the monitoring of certified production or handling operations for all entities in which such person has or has held a commercial interest, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;

(iii) Not permitting any employee, inspector, contractor, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected, Except, That, a certifying agent that is a not-for-profit organization with an Internal Revenue Code tax exemption or, in the case of a foreign certifying agent, a comparable recognition of not-for-profit status from its government, may accept voluntary labor from certified operations;

(iv) Not giving advice or providing consultancy services, to certification applicants or certified operations, for overcoming identified barriers to certification;

(v) Requiring all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and all parties responsibly connected to the certifying agent to complete an annual conflict of interest disclosure report; and

(vi) Ensuring that the decision to certify an operation is made by a person different from those who conducted the review of documents and on-site inspection.

(12) (i) Reconsider a certified operation's application for certification and, if necessary, perform a new on-site inspection when it is determined, within 12 months of certifying the operation, that any person participating in the certification process and covered under § 205.501(a)(11)(ii) has or had a conflict of interest involving the applicant. All costs associated with a reconsideration of application, including onsite inspection costs, shall be borne by the certifying agent.

(ii) Refer a certified operation to a different accredited certifying agent for recertification and reimburse the operation for the cost of the recertification when it is determined that any person covered under § 205.501(a)(11)(i) at the time of certification of the applicant had a conflict of interest involving the applicant.

(13) Accept the certification decisions made by another certifying agent accredited or accepted by USDA pursuant to § 205.500;

(14) Refrain from making false or misleading claims about its accreditation status, the USDA accreditation program for certifying agents, or the nature or qualities of products labeled as organically produced;

(15) Submit to the Administrator a copy of: (i) Any notice of denial of certification issued pursuant to § 205.405, notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation sent pursuant to § 205.662 simultaneously with its issuance and

(ii) A list, on January 2 of each year, including the name, address, and telephone number of each operation granted certification during the preceding year;

(16) Charge applicants for certification and certified production and handling operations only those fees and charges for certification activities that it has filed with the Administrator;

(17) Pay and submit fees to AMS in accordance with § 205.640;

(18) Provide the inspector, prior to each on-site inspection, with previous on-site inspection reports and notify the inspector of its decision regarding certification of the production or handling operation site inspected by the inspector and of any requirements for the correction of minor noncompliances;

(19) Accept all production or handling applications that fall within its area(s) of accreditation and certify all qualified applicants, to the extent of its administrative capacity to do so without regard to size or membership in any association or group; and

(20) Demonstrate its ability to comply with a State's organic program to certify organic production or handling operations within the State.

(21) Comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary.

(b) A private or governmental entity accredited as a certifying agent under this subpart may establish a seal, logo, or other identifying mark to be used by production and handling

operations certified by the certifying agent to indicate affiliation with the certifying agent: Provided, That, the certifying agent:

(1) Does not require use of its seal, logo, or other identifying mark on any product sold, labeled, or represented as organically produced as a condition of certification and

(2) Does not require compliance with any production or handling practices other than those provided for in the Act and the regulations in this part as a condition of use of its identifying mark: Provided, That, certifying agents certifying production or handling operations within a State with more restrictive requirements, approved by the Secretary, shall require compliance with such requirements as a condition of use of their identifying mark by such operations.

(c) A private entity accredited as a certifying agent must: (1) Hold the Secretary harmless for any failure on the part of the certifying agent to carry out the provisions of the Act and the regulations in this part;

(2) Furnish reasonable security, in an amount and according to such terms as the Administrator may by regulation prescribe, for the purpose of protecting the rights of production and handling operations certified by such certifying agent under the Act and the regulations in this part; and

(3) Transfer to the Administrator and make available to any applicable State organic program's governing State official all records or copies of records concerning the person's certification activities in the event that the certifying agent dissolves or loses its accreditation; Provided, That, such transfer shall not apply to a merger, sale, or other transfer of ownership of a certifying agent.

(d) No private or governmental entity accredited as a certifying agent under this subpart

shall exclude from participation in or deny the benefits of the National Organic Program to any person due to discrimination because of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status.

§ 205.502 Applying for accreditation.

(a) A private or governmental entity seeking accreditation as a certifying agent under this subpart must submit an application for accreditation which contains the applicable information and documents set forth in §§ 205.503 through 205.505 and the fees required in § 205.640 to: Program Manager, USDA-AMS-TMP-NOP, Room 2945-South Building, PO Box 96456, Washington, DC 20090-6456.

(b) Following the receipt of the information and documents, the Administrator will determine, pursuant to § 205.506, whether the applicant for accreditation should be accredited as a certifying agent.

§ 205.503 Applicant information.

A private or governmental entity seeking accreditation as a certifying agent must submit the following information:

(a) The business name, primary office location, mailing address, name of the person(s) responsible for the certifying agent's day-to-day operations, contact numbers (telephone, facsimile, and Internet address) of the applicant, and, for an applicant who is a private person, the entity's taxpayer identification number;

(b) The name, office location, mailing address, and contact numbers (telephone, facsimile, and Internet address) for each of its organizational units, such as chapters or subsidiary offices, and the name of a contact person for each unit;

(c) Each area of operation (crops, wild crops, livestock, or handling) for which accreditation is requested and the estimated number of each type of operation anticipated to be certified annually by the applicant along with a copy of the applicant's schedule of fees for all services to be provided under these regulations by the applicant;

(d) The type of entity the applicant is (e.g., government agricultural office, for-profit business, not-for-profit membership association) and for:

(1) A governmental entity, a copy of the official's authority to conduct certification activities under the Act and the regulations in this part,

(2) A private entity, documentation showing the entity's status and organizational purpose, such as articles of incorporation and by-laws or ownership or membership provisions, and its date of establishment; and

(e) A list of each State or foreign country in which the applicant currently certifies production and handling operations and a list of each State or foreign country in which the applicant intends to certify production or handling operations.

§ 205.504 Evidence of expertise and ability.

A private or governmental entity seeking accreditation as a certifying agent must submit the following documents and information to demonstrate its expertise in organic production or handling techniques; its ability to fully comply with and implement the organic certification program established in §§ 205.100 and 205.101, §§ 205.201 through 205.203, §§ 205.300 through 205.303, §§ 205.400 through 205.406, and §§ 205.661 and 205.662; and its ability to comply with the requirements for accreditation set forth in § 205.501:

(a) Personnel. (1) A copy of the applicant's policies and procedures for training,

evaluating, and supervising personnel;

(2) The name and position description of all personnel to be used in the certification operation, including administrative staff, certification inspectors, members of any certification review and evaluation committees, contractors, and all parties responsibly connected to the certifying agent;

(3) A description of the qualifications, including experience, training, and education in agriculture, organic production, and organic handling, for:

(i) Each inspector to be used by the applicant and

(ii) Each person to be designated by the applicant to review or evaluate applications for certification; and

(4) A description of any training that the applicant has provided or intends to provide to personnel to ensure that they comply with and implement the requirements of the Act and the regulations in this part.

(b) Administrative policies and procedures. (1) A copy of the procedures to be used to evaluate certification applicants, make certification decisions, and issue certification certificates;

(2) A copy of the procedures to be used for reviewing and investigating certified operation compliance with the Act and the regulations in this part and the reporting of violations of the Act and the regulations in this part to the Administrator;

(3) A copy of the procedures to be used for complying with the recordkeeping requirements set forth in § 205.501(a)(9);

(4) A copy of the procedures to be used for maintaining the confidentiality of any business-related information as set forth in § 205.501(a)(10);

(5) A copy of the procedures to be used, including any fees to be assessed, for making the following information available to any member of the public upon request:

(i) Certification certificates issued during the current and 3 preceding calender years;

(ii) A list of producers and handlers whose operations it has certified, including for each the name of the operation, type(s) of operation, products produced, and the effective date of the certification, during the current and 3 preceding calender years;

(iii) The results of laboratory analyses for residues of pesticides and other prohibited substances conducted during the current and 3 preceding calender years; and

(iv) Other business information as permitted in writing by the producer or handler; and

(6) A copy of the procedures to be used for sampling and residue testing pursuant to § 205.670.

(c) Conflicts of interest. (1) A copy of procedures intended to be implemented to prevent the occurrence of conflicts of interest, as described in § 205.501(a)(11).

(2) For all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and all parties responsibly connected to the certifying agent, a conflict of interest disclosure report, identifying any food- or agriculture-related business interests, including business interests of immediate family members, that cause a conflict of interest.

(d) Current certification activities. An applicant who currently certifies production or handling operations must submit: (1) A list of all production and handling operations currently certified by the applicant;

(2) Copies of at least 3 different inspection reports and certification evaluation documents for production or handling operations certified by the applicant during the previous year for each area of operation for which accreditation is requested; and

(3) The results of any accreditation process of the applicant's operation by an accrediting body during the previous year for the purpose of evaluating its certification activities.

(e) Other information. Any other information the applicant believes may assist in the Administrator's evaluation of the applicant's expertise and ability.

§ 205.505 Statement of agreement.

(a) A private or governmental entity seeking accreditation under this subpart must sign and return a statement of agreement prepared by the Administrator which affirms that, if granted accreditation as a certifying agent under this subpart, the applicant will carry out the provisions of the Act and the regulations in this part, including:

(1) Accept the certification decisions made by another certifying agent accredited or accepted by USDA pursuant to section 205.500;

(2) Refrain from making false or misleading claims about its accreditation status, the USDA accreditation program for certifying agents, or the nature or qualities of products labeled as organically produced;

(3) Conduct an annual performance evaluation of all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and implement measures to correct any deficiencies in certification services;

(4) Have an annual internal program review conducted of its certification activities by

certifying agent staff, an outside auditor, or a consultant who has the expertise to conduct such reviews and implement measures to correct any noncompliances with the Act and the regulations in this part;

(5) Pay and submit fees to AMS in accordance with § 205.640; and

(6) Comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary.

(b) A private entity seeking accreditation as a certifying agent under this subpart must additionally agree to:

(1) Hold the Secretary harmless for any failure on the part of the certifying agent to carry out the provisions of the Act and the regulations in this part;

(2) Furnish reasonable security, in an amount and according to such terms as the Administrator may by regulation prescribe, for the purpose of protecting the rights of production and handling operations certified by such certifying agent under the Act and the regulations in this part; and

(3) Transfer to the Administrator and make available to the applicable State organic program's governing State official all records or copies of records concerning the certifying agent's certification activities in the event that the certifying agent dissolves or loses its accreditation; Provided, That such transfer shall not apply to a merger, sale, or other transfer of ownership of a certifying agent.

§ 205.506 Granting accreditation.

(a) Accreditation will be granted when: (1) The accreditation applicant has submitted the information required by §§ 205.503 through 205.505;

(2) The accreditation applicant pays the required fee in accordance with § 205.640(c); and

(3) The Administrator determines that the applicant for accreditation meets the requirements for accreditation as stated in § 205.501, as determined by a review of the information submitted in accordance with §§ 205.503 through 205.505 and, if necessary, a review of the information obtained from a site evaluation as provided for in § 205.508.

(b) On making a determination to approve an application for accreditation, the Administrator will notify the applicant of the granting of accreditation in writing, stating:

(1) The area(s) for which accreditation is given;

(2) The effective date of the accreditation;

(3) Any terms and conditions for the correction of minor noncompliances; and

(4) For a certifying agent who is a private entity, the amount and type of security that must be established to protect the rights of production and handling operations certified by such certifying agent.

(c) The accreditation of a certifying agent shall continue in effect until such time as the certifying agent fails to renew accreditation as provided in § 205.510(c), the certifying agent voluntarily ceases its certification activities, or accreditation is suspended or revoked pursuant to § 205.665.

§ 205.507 Denial of accreditation.

(a) If the Program Manager has reason to believe, based on a review of the information specified in §§ 205.503 through 205.505 or after a site evaluation as specified in § 205.508, that an applicant for accreditation is not able to comply or is not in compliance with the requirements

of the Act and the regulations in this part, the Program Manager shall provide a written notification of noncompliance to the applicant. Such notification shall provide:

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

(b) When each noncompliance has been resolved, the Program Manager will send the applicant a written notification of noncompliance resolution and proceed with further processing of the application.

(c) If an applicant fails to correct the noncompliances, fails to report the corrections by the date specified in the notification of noncompliance, fails to file a rebuttal of the notification of noncompliance by the date specified, or is unsuccessful in its rebuttal, the Program Manager will provide the applicant with written notification of accreditation denial. An applicant who has received written notification of accreditation denial may apply for accreditation again at any time in accordance with § 205.502, or appeal the denial of accreditation in accordance with § 205.681 by the date specified in the notification of accreditation denial.

(d) If the certifying agent was accredited prior to the site evaluation and the certifying agent fails to correct the noncompliances, fails to report the corrections by the date specified in the notification of noncompliance, or fails to file a rebuttal of the notification of noncompliance by the date specified, the Administrator will begin proceedings to suspend or revoke the certifying agent's accreditation. A certifying agent who has had its accreditation suspended 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 must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and the regulations in this part. A certifying agent whose accreditation is revoked will be ineligible for accreditation for a period of not less than 3 years following the date of such determination.

§ 205.508 Site evaluations.

(a) Site evaluations of accredited certifying agents shall be conducted for the purpose of examining the certifying agent's operations and evaluating its compliance with the Act and the regulations of this part. Site evaluations shall include an on-site review of the certifying agent's certification procedures, decisions, facilities, administrative and management systems, and production or handling operations certified by the certifying agent. Site evaluations shall be conducted by a representative(s) of the Administrator.

(b) An initial site evaluation of an accreditation applicant shall be conducted before or within a reasonable period of time after issuance of the applicant's “notification of accreditation.” A site evaluation shall be conducted after application for renewal of accreditation but prior to the issuance of a notice of renewal of accreditation. One or more site evaluations will be conducted during the period of accreditation to determine whether an accredited certifying agent is complying with the general requirements set forth in § 205.501.

§ 205.509 Peer review panel.

The Administrator shall establish a peer review panel pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2 et seq.). The peer review panel shall be composed of not less than 3 members who shall annually evaluate the National Organic Program’s adherence to

the accreditation procedures in subpart F of these regulations and ISO/IEC Guide 61, General requirements for assessment and accreditation of certification/registration bodies, and the National Organic Program's accreditation decisions. This shall be accomplished through the review of accreditation procedures, document review and site evaluation reports, and accreditation decision documents or documentation. The peer review panel shall report its finding, in writing, to the National Organic Program's Program Manager.

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

(a) Annual report and fees. An accredited certifying agent must submit annually to the Administrator, on or before the anniversary date of the issuance of the notification of accreditation, the following reports and fees:

(1) A complete and accurate update of information submitted pursuant to §§ 205.503 and 205.504;

(2) Information supporting any changes being requested in the areas of accreditation described in § 205.500;

(3) A description of the measures implemented in the previous year and any measures to be implemented in the coming year to satisfy any terms and conditions determined by the Administrator to be necessary, as specified in the most recent notification of accreditation or notice of renewal of accreditation;

(4) The results of the most recent performance evaluations and annual program review and a description of adjustments to the certifying agent's operation and procedures implemented or to be implemented in response to the performance evaluations and program review; and

(5) The fees required in § 205.640(a).

(b) Recordkeeping. Certifying agents must maintain records according to the following schedule:

(1) Records obtained from applicants for certification and certified operations must be maintained for not less than 5 years beyond their receipt;

(2) Records created by the certifying agent regarding applicants for certification and certified operations must be maintained for not less than 10 years beyond their creation; and

(3) Records created or received by the certifying agent pursuant to the accreditation requirements of this subpart F, excluding any records covered by §§ 205.510(b)(2), must be maintained for not less than 5 years beyond their creation or receipt.

(c) Renewal of accreditation. (1) The Administrator shall send the accredited certifying agent a notice of pending expiration of accreditation approximately 1 year prior to the scheduled date of expiration.

(2) An accredited certifying agent's application for accreditation renewal must be received at least 6 months prior to the fifth anniversary of issuance of the notification of accreditation and each subsequent renewal of accreditation. The accreditation of certifying agents who make timely application for renewal of accreditation will not expire during the renewal process. The accreditation of certifying agents who fail to make timely application for renewal of accreditation will expire as scheduled unless renewed prior to the scheduled expiration date. Certifying agents with an expired accreditation must not perform certification activities under the Act and these regulations.

(3) Following receipt of the information submitted by the certifying agent in accordance with paragraph (a) of this section and the results of a site evaluation, the Administrator will

determine whether the certifying agent remains in compliance with the Act and the regulations of this part and should have its accreditation renewed.

(d) Notice of renewal of accreditation. Upon a determination that the certifying agent is in compliance with the Act and the regulations of this part, the Administrator will issue a notice of renewal of accreditation. The notice of renewal will specify any terms and conditions that must be addressed by the certifying agent and the time within which those terms and conditions must be satisfied.

(e) Noncompliance. Upon a determination that the certifying agent is not in compliance with the Act and the regulations of this part, the Administrator will initiate proceedings to suspend or revoke the certifying agent's accreditation.

(f) Amending accreditation. Amendment to scope of an accreditation may be requested at any time. The application for amendment shall be sent to the Administrator and shall contain information applicable to the requested change in accreditation, a complete and accurate update of the information submitted pursuant to §§ 205.503 and 205.504, and the applicable fees required in § 205.640.

§§ 205.511-205.599 [Reserved]

Subpart G – Administrative

The National List of Allowed and Prohibited Substances

§ 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 nonsynthetic 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) Nonsynthetics used in organic processing will be evaluated using the criteria specified

in the Act (7 U.S.C. 6517 and 6518).

§ 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 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) Hydrogen peroxide

(4) Soap-based algicide/demisters

(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))

(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 repellant 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) Elemental sulfur

(4) Lime sulfur - including calcium polysulfide

(5) Oils, horticultural - narrow range oils as dormant, suffocating, and summer oils.

(6) Soaps, insecticidal

(7) Sticky traps/barriers

(f) As insect attractants

Pheromones

(g) As rodenticides

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

(2) Vitamin D3

(h) As slug or snail bait

<None>

(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 - must be used in a manner that minimizes copper accumulation in the soil.

(4) Hydrogen peroxide

(5) Lime sulfur

(6) Oils, horticultural, narrow range oils as dormant, suffocating, and summer oils.

(7) Potassium bicarbonate

(8) Elemental sulfur

(9) Streptomycin, for fire blight control in apples and pears only

(10) 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, B1, C, and E

(k) As plant growth regulators

Ethylene - 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

(n)-(z) [Reserved]

§ 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) 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

(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

(i) Calcium hypochlorite

(ii) Chlorine dioxide

(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

(5) Electrolytes - without antibiotics

(6) Glucose

(7) Glycerin - Allowed as a livestock teat dip, must be produced through the hydrolysis of fats or oils

(8) Iodine

(9) Hydrogen peroxide

(10) Magnesium sulfate

(11) Oxytocin - use in postparturition therapeutic applications

(12) 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.

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

(14) Biologics

Vaccines

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

(1) Iodine

(2) 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

(3) Lime, hydrated - (bordeaux mixes), not permitted to cauterize physical alterations or deodorize animal wastes.

(4) Mineral oil - for topical use and as a lubricant

(5) 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

(6) Copper sulfate

(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) Trace minerals, used for enrichment or fortification when FDA approved, including:

(i) Copper sulfate

(ii) Magnesium sulfate

(2) 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.

EPA List 4 - Inerts of Minimal Concern.

(f)-(z) [Reserved]

§ 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

(b)-(z) [Reserved]

§ 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:

(1) Acids

(i) Alginic

(ii) Citric - produced by microbial fermentation of carbohydrate substances

(iii) Lactic

(2) Bentonite

(3) Calcium carbonate

(4) Calcium chloride

(5) Colors, nonsynthetic sources only

(6) Dairy cultures

(7) Diatomaceous earth - food filtering aid only

(8) Enzymes - must be derived from edible, nontoxic plants, nonpathogenic fungi, or nonpathogenic bacteria

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

(10) Kaolin

(11) Magnesium sulfate, nonsynthetic sources only

(12) Nitrogen - oil-free grades

(13) Oxygen - oil-free grades

(14) Perlite - for use only as a filter aid in food processing

(15) Potassium chloride

(16) Potassium iodide

(17) Sodium bicarbonate

(18) Sodium carbonate

(19) Waxes - nonsynthetic

(i) Carnauba wax

(ii) Wood resin

(20) Yeast - nonsynthetic, growth on petrochemical substrate and sulfite waste liquor is prohibited

(i) Autolysate

(ii) Bakers

(iii) Brewers

(iv) Nutritional

(v) Smoked - nonsynthetic smoke flavoring process must be documented.

(b) Synthetics allowed:

(1) Alginates

(2) Ammonium bicarbonate - for use only as a leavening agent

(3) Ammonium carbonate - for use only as a leavening agent

(4) Ascorbic acid

(5) Calcium citrate

(6) Calcium hydroxide

(7) Calcium phosphates (monobasic, dibasic, and tribasic)

(8) Carbon dioxide

(9) 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.

(i) Calcium hypochlorite

(ii) Chlorine dioxide

(iii) Sodium hypochlorite

(10) Ethylene - allowed for postharvest ripening of tropical fruit

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

(12) Glycerides (mono and di) - for use only in drum drying of food

(13) Glycerin - produced by hydrolysis of fats and oils

(14) Hydrogen peroxide

(15) Lecithin - bleached

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

(17) Magnesium chloride - derived from sea water

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

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

(20) Ozone

(21) Pectin (low-methoxy)

(22) Phosphoric acid - cleaning of food-contact surfaces and equipment only

(23) Potassium acid tartrate

(24) Potassium tartrate made from tartaric acid

(25) Potassium carbonate

(26) Potassium citrate

(27) Potassium hydroxide - prohibited for use in lye peeling of fruits and vegetables

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

(29) Potassium phosphate - for use only in agricultural products labeled “made with

organic (specific ingredients or food group(s)),” prohibited in agricultural products labeled “organic”

(30) Silicon dioxide

(31) Sodium citrate

(32) Sodium hydroxide - prohibited for use in lye peeling of fruits and vegetables

(33) Sodium phosphates - for use only in dairy foods

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

(35) Tocopherols - derived from vegetable oil when rosemary extracts are not a suitable alternative

(36) Xanthan gum

(c)-(z) [Reserved]

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as organic or made with organic ingredients.

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.

Any nonorganically produced agricultural product may be used in accordance with the restrictions specified in this section and 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.

(a) Any person may petition the National Organic Standard Board for the purpose of having a substance evaluated by the Board for recommendation to the Secretary for inclusion on or deletion from the National List in accordance with the Act.

(b) A person petitioning for amendment of the National List should request a copy of the petition procedures from the USDA at the address in § 205.607(c).

(c) A petition to amend the National List must be submitted to: Program Manager, USDA/AMS/TMP/NOP, Room 2945, South Building, P.O. Box 96456, Washington, DC 20090-6456.

State Organic Programs

§ 205.620 Requirements of State organic programs.

(a) A State may establish a State organic program for production and handling operations within the State which produce and handle organic agricultural products.

(b) A State organic program must meet the requirements for organic programs specified in the Act.

(c) A State organic program may contain more restrictive requirements because of environmental conditions or the necessity of specific production or handling practices particular to the State or region of the United States.

(d) A State organic program must assume enforcement obligations in the State for the

requirements of this part and any more restrictive requirements approved by the Secretary.

(e) A State organic program and any amendments to such program must be approved by the Secretary prior to being implemented by the State.

§ 205.621 Submission and determination of proposed State organic programs and amendments to approved State organic programs.

(a) A State organic program's governing State official must submit to the Secretary a proposed State organic program and any proposed amendments to such approved program.

(1) Such submission must contain supporting materials that include statutory authorities, program description, documentation of the environmental conditions or specific production and handling practices particular to the State which necessitate more restrictive requirements than the requirements of this part, and other information as may be required by the Secretary.

(2) Submission of a request for amendment of an approved State organic program must contain supporting materials that include an explanation and documentation of the environmental conditions or specific production and handling practices particular to the State or region, which necessitates the proposed amendment. Supporting material also must explain how the proposed amendment furthers and is consistent with the purposes of the Act and the regulations of this part.

(b) Within 6 months of receipt of submission, the Secretary will: Notify the State organic program's governing State official of approval or disapproval of the proposed program or amendment of an approved program and, if disapproved, the reasons for the disapproval.

(c) After receipt of a notice of disapproval, the State organic program's governing State official may submit a revised State organic program or amendment of such a program at any time.

§ 205.622 Review of approved State organic programs.

The Secretary will review a State organic program not less than once during each 5-year period following the date of the initial program approval. The Secretary will notify the State organic program's governing State official of approval or disapproval of the program within 6 months after initiation of the review.

Fees

§ 205.640 Fees and other charges for accreditation.

Fees and other charges equal as nearly as may be to the cost of the accreditation services rendered under the regulations, including initial accreditation, review of annual reports, and renewal of accreditation, shall be assessed and collected from applicants for initial accreditation and accredited certifying agents submitting annual reports or seeking renewal of accreditation in accordance with the following provisions:

(a) Fees-for-Service. (1) Except as otherwise provided in this section, fees-for-service shall be based on the time required to render the service provided calculated to the nearest 15-minute period, including the review of applications and accompanying documents and information, evaluator travel, the conduct of on-site evaluations, review of annual reports and updated documents and information, and the time required to prepare reports and any other documents in connection with the performance of service. The hourly rate shall be the same as that charged by the Agricultural Marketing Service, through its Quality Systems Certification Program, to certification bodies requesting conformity assessment to the International Organization for Standardization "General Requirements for Bodies Operating Product Certification Systems" (ISO Guide 65).

(2) Applicants for initial accreditation and accredited certifying agents submitting annual

reports or seeking renewal of accreditation during the first 18 months following the effective date of subpart F of this part shall receive service without incurring an hourly charge for service.

(3) Applicants for initial accreditation and renewal of accreditation must pay at the time of application, effective 18 months following the effective date of subpart F of this part, a nonrefundable fee of $500.00 which shall be applied to the applicant's fees-for-service account.

(b) Travel charges. When service is requested at a place so distant from the evaluator's headquarters that a total of one-half hour or more is required for the evaluator(s) to travel to such place and back to the headquarters or at a place of prior assignment on circuitous routing requiring a total of one-half hour or more to travel to the next place of assignment on the circuitous routing, the charge for such service shall include a mileage charge administratively determined by the U.S. Department of Agriculture and travel tolls, if applicable, or such travel prorated among all the applicants and certifying agents furnished the service involved on an equitable basis or, when the travel is made by public transportation (including hired vehicles), a fee equal to the actual cost thereof. Travel charges shall become effective for all applicants for initial accreditation and accredited certifying agents on the effective date of subpart F of this part. The applicant or certifying agent will not be charged a new mileage rate without notification before the service is rendered.

(c) Per diem charges. When service is requested at a place away from the evaluator's headquarters, the fee for such service shall include a per diem charge if the employee(s) performing the service is paid per diem in accordance with existing travel regulations. Per diem charges to applicants and certifying agents will cover the same period of time for which the evaluator(s) receives per diem reimbursement. The per diem rate will be administratively

determined by the U.S. Department of Agriculture. Per diem charges shall become effective for all applicants for initial accreditation and accredited certifying agents on the effective date of subpart F of this part. The applicant or certifying agent will not be charged a new per diem rate without notification before the service is rendered.

(d) Other costs. When costs, other than costs specified in paragraphs (a), (b), and (c) of this section, are associated with providing the services, the applicant or certifying agent will be charged for these costs. Such costs include but are not limited to equipment rental, photocopying, delivery, facsimile, telephone, or translation charges incurred in association with accreditation services. The amount of the costs charged will be determined administratively by the U.S. Department of Agriculture. Such costs shall become effective for all applicants for initial accreditation and accredited certifying agents on the effective date of subpart F of this part.

§ 205.641 Payment of fees and other charges.

(a) Applicants for initial accreditation and renewal of accreditation must remit the nonrefundable fee, pursuant to § 205.640(a)(3), along with their application. Remittance must be made payable to the Agricultural Marketing Service, USDA, and mailed to: Program Manager, USDA-AMS-TMP-NOP, Room 2945-South Building, P.O. Box 96456, Washington, DC 20090-6456 or such other address as required by the Program Manager.

(b) Payments for fees and other charges not covered under paragraph (a) of this section must be:

(1) Received by the due date shown on the bill for collection;

(2) Made payable to the Agricultural Marketing Service, USDA; and

(3) Mailed to the address provided on the bill for collection.

(c) The Administrator shall assess interest, penalties, and administrative costs on debts not paid by the due date shown on a bill for collection and collect delinquent debts or refer such debts to the Department of Justice for litigation.

§ 205.642 Fees and other charges for certification.

Fees charged by a certifying agent must be reasonable, and a certifying agent shall charge applicants for certification and certified production and handling operations only those fees and charges that it has filed with the Administrator. The certifying agent shall provide each applicant with an estimate of the total cost of certification and an estimate of the annual cost of updating the certification. The certifying agent may require applicants for certification to pay at the time of application a nonrefundable fee which shall be applied to the applicant's fees-for-service account. The certifying agent may set the nonrefundable portion of certification fees; however, the nonrefundable portion of certification fees must be explained in the fee schedule submitted to the Administrator. The fee schedule must explain what fee amounts are nonrefundable and at what stage during the certification process fees become nonrefundable. The certifying agent shall provide all persons inquiring about the application process with a copy of its fee schedule.

§§ 205.643-205.659 [Reserved]

Compliance

§ 205.660 General.

(a) The National Organic Program’s Program Manager, on behalf of the Secretary, may inspect and review certified production and handling operations and accredited certifying agents for compliance with the Act or regulations in this part.

(b) The Program Manager may initiate suspension or revocation proceedings against a

certified operation:

(1) When the Program Manager has reason to believe that a certified operation has violated or is not in compliance with the Act or regulations in this part; or

(2) When a certifying agent or a State organic program's governing State official fails to take appropriate action to enforce the Act or regulations in this part.

(c) The Program Manager may initiate suspension or revocation of a certifying agent's accreditation if the certifying agent fails to meet, conduct, or maintain accreditation requirements pursuant to the Act or this part.

(d) Each notification of noncompliance, rejection of mediation, noncompliance resolution, proposed suspension or revocation, and suspension or revocation issued pursuant to § 205.662, § 205.663, and § 205.665 and each response to such notification must be sent to the recipient's place of business via a delivery service which provides dated return receipts.

§ 205.661 Investigation of certified operations.

(a) A certifying agent may investigate complaints of noncompliance 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 noncompliance with the Act or regulations in this part concerning organic production or handling operations operating in the State.

§ 205.662 Noncompliance 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 noncompliance with the Act or regulations in this part, a written notification of noncompliance shall be sent to the certified operation. Such notification shall provide:

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the certified operation must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

(b) Resolution. When a certified operation demonstrates that each noncompliance 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 noncompliance resolution.

(c) Proposed suspension or revocation. When rebuttal is unsuccessful or correction of the noncompliance 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 noncompliance. When correction of a noncompliance is not possible, the notification of noncompliance 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) Willful 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 willfully violated the Act or regulations in this part, the certifying agent or State organic program's governing State official shall send the certified operation a notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the noncompliance.

(e) Suspension or revocation. (1) If the certified operation fails to correct the noncompliance, 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 noncompliance 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 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 Noncompliance procedure for certifying agents.

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

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the certifying agent must rebut or correct each noncompliance and submit supporting documentation of each correction when correction is possible.

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

(c) Proposed suspension or revocation. When rebuttal is unsuccessful or correction of the noncompliance 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 noncompliance is not possible, the notification of noncompliance 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) Willful violations. Notwithstanding paragraph (a) of this section, if the Program Manager has reason to believe that a certifying agent has willfully 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 must be accompanied by evidence demonstrating correction of each noncompliance 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 Noncompliance procedures under State organic programs.

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

(b) A noncompliance 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 noncompliance with the Act or regulations concerning accreditation of certifying

agents operating in the State. When such review or investigation reveals any noncompliance, the State organic program's governing State official shall send a written report of noncompliance to the Program Manager. The report shall provide a description of each noncompliance and the facts upon which the noncompliance 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 labeled "organic."

(a) All agricultural products that are to be sold, labeled, 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 preharvest or postharvest testing of any agricultural input used or agricultural product to be sold, labeled, 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 preharvest or postharvest 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. 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 tolerences, 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, labeled, 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, labeled, 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, labeled, or represented as organically produced: Except, That:

(1) Milk or milk products may be sold, labeled, 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.

§§ 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 noncompliance 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 noncompliance 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 noncompliance 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 noncompliance decision must be filed within the time period provided in the letter of notification or within 30 days from receipt of the 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 nonappealable 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.

§§ 205.682-205.689 [Reserved]

Miscellaneous

§ 205.690 OMB control number.

The control number assigned to the information collection requirements in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S C. Chapter 35, is OMB number 0581-0181.

§§ 205.691-205.699 [Reserved]

Chapter 16-157 WAC

ORGANIC FOOD STANDARDS AND CERTIFICATION

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PART I
GENERAL PROVISIONS

WAC 16-157-010 Purpose. This chapter is promulgated pursuant to RCW 15.86.060 wherein the director is authorized to adopt rules for the proper administration of the Organic Food Products Act and pursuant to RCW 15.86.070 wherein the director is authorized to adopt rules establishing a certification program for producers, processors and handlers of organic and transitional food.

WAC 16-157-020 Adoption of the National Organic Program. The 2001 National Organic Program final rule, 7 CFR Part 205, effective April 21, 2001, is adopted by reference as Washington state standards for the production and handling of organic crops, livestock and processed food products. The 2001 National Organic Program final rule may be obtained from the department.

WAC 16-157-030 Definitions. As used in this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department of agriculture or his or her duly authorized representative.

(3) "Facility" includes, but is not limited to, any premises, plant, establishment, facilities and the appurtenances thereto, in whole or in part, where organic food is prepared, handled, or processed in any manner for resale or distribution to retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer.

(4) "New applicant" means any person that applies for organic certification for the first time, or when previous certification status has expired for at least one year.

(5) "Processor" means any handler engaged in the canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, slaughtering or otherwise processing organic food.

(6) "Renewal applicant" means any person that has received organic certification from the department in the previous year.

(7) "Retailer" means any handler that sells organic food products directly to consumers.

(8) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

(9) "Site" means a defined field, orchard, block, pasture, paddock, garden, circle, plot or other designated area.

(10) "Transitional product" means any agricultural product that (a) is marketed using the term transitional in its labeling and advertising and (b) satisfies all of the requirements of organic except that it has had no applications of prohibited substances within one year prior to the harvest of the crop.

PART II
ORGANIC PRODUCTION AND HANDLING STANDARDS

WAC 16-157-120 Organic mushroom standard.

(1) The producer must maintain a production environment that prevents contact between organically produced mushrooms and prohibited substances throughout the entire growing cycle, harvesting and post-harvesting process. The producer must not use lumber treated with arsenate or other prohibited materials for new installations or replacement purposes in contact with the growth substrate.

(2) Organic and nonorganic production must be in separate facilities and have separate ventilation systems.

(3) The producer must use organically produced spawn.

(4) The producer may use nonorganic agar medium that may contain antibiotics not to exceed 1/25th of a gram per liter of agar mix.

(5) Agricultural materials including grain and straw that are used in production substrate must be organically produced. Sawdust, logs or other materials derived from wood used as a growth substrate must originate from trees that have been grown in areas free of prohibited materials for at least three years, and must not have

been treated with a prohibited substance after tree harvest. Producers may include nonsynthetic, nonagricultural materials in substrate used to produce mushrooms.

(6) All growing medium amendments must be certified organic.

(7) Manure and any nonorganic agricultural material used as a growth substrate must be from an organic source. Compost used as a growth substrate must consist of certified organic feedstocks.

PART III
ORGANIC CERTIFICATION

WAC 16-157-210 Confidentiality. Except for applications and laboratory analyses submitted for certification under this chapter, the department keeps confidential any business-related information obtained under this chapter. All business-related information submitted to the department under this chapter is exempt from public inspection and copying consistent with RCW 15.86.110 and 42.17.310.

WAC 16-157-220 Producer fee schedule. Producers who wish to apply for the organic food certification program must apply to the department each year.

(1) The cost per application shall be based on the following fee schedule.

(a) Renewal applicants -

Application fees must be based on the previous calendar year's sales of organic food. In the event that the current calendar year's sales exceed the previous year's sales, the department may bill the producer for the additional fee. In the event that the current calendar year's sales are less than the previous year's sales, the producer may request a refund for the reduced fee. In addition, renewal applications postmarked after March 1, must pay a late fee of seventy-five dollars. Renewal applicants that are adding additional sites to their organic certification must pay a new site fee of fifty dollars for each additional site.

(b) New applicants -

Application fees must be based on an estimate of the current year's sales of organic food. In the event that the current calendar year's sales exceed the estimate, the department may bill the producer for the additional fee. In the event that the current calendar year's sales are less than the estimate, the producer may request a refund for the reduced fee. In addition, new applicants must pay a one_hundred dollar new applicant fee. New applicants that are seeking organic certification for more than one site must pay a site fee of fifty dollars for each additional site. The fee shall accompany the application.

SALES			ANNUAL FEE
$ 0	-	$ 15,000	. . . . . .$ 200
$ 15,001	-	$ 20,000	. . . . . .$ 225
$ 20,001	-	$ 25,000	. . . . . .$ 280
$ 25,001	-	$ 30,000	. . . . . .$ 335
$ 30,001	-	$ 35,000	. . . . . .$ 390
$ 35,001	-	$ 42,500	. . . . . .$ 470
$ 42,501	-	$ 50,000	. . . . . .$ 560
$ 50,001	-	$ 65,000	. . . . . .$ 670
$ 65,001	-	$ 80,000	. . . . . .$ 835
$ 80,001	-	$ 100,000	. . . . . .$ 1,000
$100,001	-	$ 125,000	. . . . . .$ 1,150
$125,001	-	$ 150,000	. . . .$ 1,300
$150,001	-	$ 175,000	. . . .$ 1,450
$175,001	-	$ 200,000	. . . .$ 1,600
$200,001	-	$ 240,000	. . . .$ 1,750
$240,001	-	$ 280,000	. . . . . .$ 1,900
$280,001	-	$ 325,000	. . . . . .$ 2,050
$325,001	-	$ 375,000	. . . . . .$ 2,200
$375,001	-	$ 425,000	. . . . . .$ 2,450
$425,001	-	$ 500,000	. . . . . .$ 2,700
$500,001	-	$ 750,000	. . . . . .$ 3,000
$750,001	-	$7,000,000	. . . . . .$ 2,200 plus 0.11% of gross organic sales
Over		$7,000,000	. . . . . .$10,000

(2) Transitional acreage fee - In addition to the producer application fee, each applicant must pay a fee of five dollars per acre for the land for which they are requesting transitional certification.

WAC 16-157-230 Processor fee schedule. Processors who wish to apply for the organic food certification program must apply to the department each year. Producers that process their own organic products pay application and certification fees under WAC 16-157-220.

(1) **Application fee.**

(a) **Renewal applicants** - Application fees are two hundred dollars per facility. In addition, renewal applications postmarked after March 1, must pay a late fee of seventy-five dollars.

(b) **New applicants** - Application fees are two hundred dollars per facility. In addition, new applicants must pay a one hundred dollar new applicant fee.

(2) **Certification fee** - A certification fee based on the following fee schedule must accompany the application. Certification fees are assessments on the organic products in each category. New applicants must base certification fees on an estimate of sales in each category. Renewal applicants must base certification fees on the previous calendar year's sales in each category. Applicants may have food products in more than one category.

Category I - Organic food products: Products labeled as "organic" or "one hundred percent organic" are assessed 0.30% of the previous calendar year's sales for the first million dollars and 0.11% for sales

above one million dollars.

Category II - Made with organic food products: Products labeled as "made with organic ingredients" are assessed 0.20% of the previous calendar year's sales for the first million dollars and 0.07% for sales above one million dollars.

Category III - Food products with organic ingredients: Products packaged for retail sales that limit their organic claims to the information panel are assessed 0.11% of the previous calendar year's sales for the first million dollars and 0.04% for sales above one million dollars.

Category IV - Custom organic food products: Products produced by processors who charge a service fee to organic manufacturers for processing organic food are assessed at 0.40% of the previous calendar year's service fees received for processing organic food for the first million dollars and 0.11% for service fees above one million dollars.

In the event that the current calendar year's sales (or service fees) exceed the previous year's sales (or service fees) or estimate of sales, the department may bill the applicant for the additional certification fee. In the event that the current calendar year's sales (or service fees) are less than the previous year's gross sales (or service fees) or estimate of sales, the applicant may request a refund for the reduced certification fee.

WAC 16-157-240 Handler fee schedule. Handlers who wish to apply for the organic food certification program must apply to the department each year. Handlers that process organic food products must apply for organic certification under WAC 16-157-230. Retailers who wish to apply for the organic food certification program must apply for organic certification under WAC 16-157-245. Producers that handle only their own organic products do not need to obtain separate certification as handlers. All other handlers of organic food products may apply for organic certification under this section.

(1) Renewal applicants. Application fees must be based on the previous calendar year's sales of organic food. In the event that the current calendar year's sales exceed the previous year's sales, the department may bill the handler for the additional fee. In the event that the current calendar year's sales are less than the previous year's sales, the handler may request a refund for the reduced fee. In addition, renewal applications postmarked after March 1 must pay a late fee of seventy-five dollars.

(2) New applicants. Application fees must be based on an estimate of the current year's sales of organic food. In the event that the current calendar year's sales exceed the estimate, the department may bill the handler for the additional fee. In the event that the current calendar year's sales are less than the estimate, the handler may request a refund for the reduced fee. In addition, new applicants must pay a one hundred dollar new applicant fee.

(3) The cost per facility must be based on the following fee schedule. The appropriate fee must accompany the application.

ORGANIC SALES			FEE
$ 0		$ 50,000	$ 200
$ 50,001	-	$ 75,000	$ 250
$ 75,001	-	$ 100,000	$ 330
$ 100,001	-	$ 200,000	$ 440
$ 200,001	-	$ 300,000	$ 550
$ 300,001	-	$ 400,000	$ 660
$ 400,001	-	$ 500,000	$ 770
$ 500,001	-	$ 750,000	$ 990
$ 750,001	-	$ 1,000,000	$ 1,100
$1,000,001	-	$ 1,250,000	$ 1,375
$1,250,001	-	$ 1,500,000	$ 1,650
$1,500,001	-	$ 2,000,000	$ 2,200
$2,000,001	-	$ 2,500,000	$ 2,750
$2,500,001	-	$ 3,000,000	$ 3,300
$3,000,001	-	$ 4,000,000	$ 3,850
$4,000,001	-	$ 5,000,000	$ 4,400
$5,000,001	-	$ 6,000,000	$ 5,500
$6,000,001	-	$ 7,000,000	$ 6,600
$7,000,001	-	$ 8,000,000	$ 7,700
$8,000,001	-	$ 9,000,000	$ 8,800
$9,000,001	-	$10,000,000	$ 9,900
Over		$10,000,000	$11,000

WAC 16-157-245 Retailer fee schedule. Retailers who wish to apply for the organic food certification program must apply to the department each year.

(1) Renewal applicants. Application fees must be based on the previous calendar year's sales of organic products. In the event that the current calendar year's sales exceed the previous year's sales, the department may bill the retailer for the additional fee. In the event that the current calendar year's sales are less than the previous year's sales, the retailer may request a refund for the reduced fee. In addition, renewal applications postmarked after March 1 must pay a late fee of seventy-five dollars.

(2) New applicants. Application fees must be based on an estimate of the current year's sales of organic food. In the event that the current calendar year's sales exceed the estimate, the department may bill the retailer for the additional fee. In the event that the current calendar year's sales are less than the estimate, the retailer may request a refund for the reduced fee. In addition, new applicants must pay a one hundred dollar new applicant fee.

(3) The cost per facility must be based on the following fee schedule. The appropriate fee must accompany the application.

ORGANIC SALES			FEE
$ 0	-	$ 100,000	$ 330
$ 100,001	-	$ 500,000	$ 500
$ 500,001	-	$1,000,000	$ 750
$1,000,001	-	$2,000,000	$1,000
$2,000,001	-	$3,000,000	$1,500
$3,000,001	-	$4,000,000	$2,000
$4,000,001	-	$5,000,000	$2,250
Over		$5,000,000	$2,500

WAC 16-157-250 Inspections. The director shall make at least one inspection and any additional inspections deemed necessary to each applicant each year to determine compliance with this chapter and chapter 15.86 RCW and rules adopted pursuant to chapter 15.86 RCW. This inspection may entail a survey of required records, examination of fields, facilities and storage areas, and any other information deemed necessary by the requirements of this chapter.

The annual on-site inspection and any additional inspections conducted for collecting samples or for surveillance within the state of Washington are provided for under the application and certification fees. Additional inspections, if necessary to determine compliance or requested, will be charged to the applicant at the rate of forty dollars per hour plus mileage set at the rate established by the state office of financial management. Out-of-state inspections, if necessary or requested, shall be at the rate of $40/hr. plus transportation costs.

WAC 16-157-255 Sampling. A representative sample of the product may be tested for pesticide or other contaminants whenever the director deems it necessary for certification or maintenance of certification. Sample analysis is provided under the application and certification fees.

WAC 16-157-260 Organic and transitional producer certification.

(1) Organic producers certified under this chapter may use the organic producer logo, found in WAC 16-157-275, to identify organic products.

Transitional producers certified under this chapter may use the transitional producer logo, found in WAC 16-157-275, to identify transitional products.

(2) The director must review the application, inspection report and results of any samples collected to determine that the producer has complied with the conditions for organic or transitional certification. A certificate will be issued when the director determines that the producer has complied with the conditions for organic or transitional producer certification.

WAC 16-157-270 Organic food processor and handler certification.

(1) The director must review the application, inspection report and results of any samples collected to determine that the processor or handler has complied with the conditions for organic food certification. An organic food certificate will be issued when the director determines that the processor or handler has complied with the conditions for organic food certification.

(2) Processors certified under this chapter may use the organic processor logo, found in WAC 16-157-275, to identify organic products processed by the facility.

(3) Handlers certified under this chapter may use the organic handler logo, found in WAC 16-157-275, to identify organic products handled by the facility.

WAC 16-157-275 Organic and transitional certification logos.

WAC 16-157-290 Export and transaction certificates.

(1) Organic export and transaction certificates are issued to verify that a specific shipment of organic food products has been produced, processed, and handled in accordance with the 2001 National Organic Program, 7 CFR Part 205 or a foreign organic standard.

(2) Applications for export and transaction certificates must be submitted on forms furnished by the department. The applicant must furnish all information requested on the application. A separate application must be made for each export and transaction certificate.

(3) The fee for export and transaction certificates shall be forty dollars per application.

STATE OF WASHINGTON

DEPARTMENT OF AGRICULTURE

P.O. Box 42560 • Olympia, Washington 98504-2560 • (360) 902-1800

Other Policies

Refunds

A request for refund may be submitted to the Organic Food Program at any time during the certification process; however, refunds will only be issued based on the following parameters.

Fee Types:

1. New Applicant Fee of $100. This fee is non-refundable.
2. Late Fee of $75. This fee is non-refundable.
3. Producer Site Fee of $50 per additional site. After the Site Information Form is submitted, this fee is non-refundable.
4. Producer Transitional Acreage Fee of $5 per acre. This fee is refundable prior to issuance of the certificate or updated certificate.
5. Processor Facility Fee of $200. This fee is non-refundable.
6. Certification Fee or the fee which is based on the gross sales of organic products. This fee is refundable under the following conditions.

    - New Applicants who request a refund prior to the inspection will receive a full refund of the Certification Fee. If the request for refund is made after the inspection and prior to certification, the Certification Fee is refundable except for $200 for producers and handlers and $330 for retailers.
    - Renewal Applicants who request a refund because they are withdrawing from the Organic Food Program must submit a) a written request to withdraw from the program, b) the original certificate that was issued to them upon the renewal of their certification, and c) the current calendar year's sales of organic products. The refund will be issued based on the current calendar year's sales; however, $200 is not refundable for producers and handlers and $330 is not refundable for retailers.
    - Renewal Applicants who request a refund because the current calendar year's gross sales are less than the previous calendar year's gross sales or estimate of sales must submit the current calendar year's gross sales and will receive a refund for the reduced Certification Fee.
7. Inspection Fee of $40 per hour and travel costs. This fee is non-refundable.
8. Export Documentation Fees. These fees are non-refundable.

Laboratory Analysis of Samples

As part of the certification process, the Washington State Department of Agriculture Organic Food Program (WSDA OFP) takes samples from a percentage of applicants. These samples are sent to a laboratory for chemical residue analysis. The laboratory that the WSDA OFP deals with is the Washington State Department of Agriculture (WSDA) Chemical and Hop Laboratory.

In signing the new or renewal application, you are giving permission for the WSDA OFP to send any samples that are taken at your farm/facility to the WSDA Chemical and Hop Laboratory.

Washington State Department of Agriculture
Organic Food Program

APPLICATION

ORGANIC CERTIFICATION COST-SHARE PROGRAM

The Organic Certification Cost-Share Program is designed to provide assistance to organic producers, processors, and handlers who receive and/or update their organic certification between October 1, 2002 and September 30, 2003. Cost-Share payments will be limited to 75 percent of an individual producer, processor, or handler's certification costs, up to a maximum of $500 per certification.

Only producers, processors, and handler within Washington State are eligible to receive cost-share money from the Washington State Department of Agriculture (WSDA). If your certified farm or facility is located in a state outside of Washington State, you must contact your state department of agriculture for a cost-share application.

CONTACT PERSON		
BUSINESS NAME		
MAILING ADDRESS		
CITY	STATE	ZIP
PRIMARY PHONE NUMBER	ALTERNATE PHONE NUMBER	
FAX NUMBER	EMAIL ADDRESS	

In order to receive cost-share funds, eligible producers, processor, or handlers must complete this application and the W-9 form each time organic certification costs are incurred. Certification costs include those fees designated under chapter 15-157 WAC as "New Applicant Fee", "Facility Fee", "Site Fee", and "Certification Fee". Export fees, late fees, and transitional certification costs are not eligible for cost-share funds.

Please fill in the amount of certification costs. **Certification Costs: $**_____

If someone other than you or your company pays for your certification, please list the name and phone number of the entity who pays the certification costs.

NAME OF ENTITY WHO PAYS	PHONE NUMBER

Please complete and submit the enclosed W-9 form along with this application. The W-9 form must be submitted in order to receive the full amount available under the cost-share program.

Are you certified by Washington State Department of Agriculture? ❑ Yes ❑ No

If Yes, what is your certification number? Certification Number: _____

If No, you must be certified by a USDA accredited organic certification agency and you must attach a copy of your organic certificate to this application for cost-share funds.

Agreement [The person signing the application must be authorized to represent the firm.]

Signature of Representative _____ **Date** _____

Print Name _____ **Title** _____

SEND APPLICATION TO:
Washington State Dept of Agriculture
PO Box 42560
Olympia, WA 98504-2560

Substitute Form **W-9**

(Rev. March 2002)

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Please print or type

Name (See **Specific Instructions** on page 2.)

Business name, if different from above. (See **Specific Instructions** on page 2.)

Check appropriate box: ☐ Individual/Sole Proprietor ☐ Corporation ☐ Partnership ☐ Other ►

☐ LLC filing as Sole Proprietor ☐ LLC filing as Corporation ☐ LLC filing as Partnership

Address (number, street, and apt. or suite no.)

Requestor's name and address (optional)

City, state, and ZIP code

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). **However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 2.** For other entities, it is your employer identification number (EIN). If you do not have a number, see **How to get a TIN** on page 2.

Note: *If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.*

Social security number

or

Employer identification number

List account number(s) here (optional)

Part II For U.S. Payees Exempt From Backup Withholding (See the instructions on page 2.)

►

Part III Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), **and**
2. I am not subject to backup withholding because: **(a)** I am exempt from backup withholding, or **(b)** I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or **(c)** the IRS has notified me that I am no longer subject to backup withholding, **and**
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on you tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 2)

Sign Here **Signature of U.S. person ►** **Date ►**

Purpose of Form

A person who is required to file an information return with the IRS must get your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to give your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

If you are a foreign person, use the appropriate Form W-8. See **Pub. 515,** Withholding of Tax on Nonresident Aliens and Foreign Corporations.

Note: *If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.*

What is backup withholding? Persons making certain payments to you must withhold and pay to the IRS 31% of such payments under certain conditions. This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, non-employee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

If you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return, payments you receive will not be subject to backup withholding. **Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester, or
2. You do not certify your TIN when required (see the Part III instructions on page 2 for details), or
3. The IRS tells the requester that you furnished an incorrect TIN, or
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the Part II instructions and the separate **Instructions for the Requester of Form W-9.**

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name. If you are an individual, you must generally enter the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first and then circle the name of the person or entity whose number you enter in Part I of the form.

Sole proprietor. Enter your **individual** name as shown on your social security card on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, **enter the owner's name on the "Name" line.** Enter the LLC's name on the "Business name" line.

Caution: *A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.*

Other entities. Enter your business name as shown on required Federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Part I—Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box.

If you are a **resident alien** and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see **How to get a TIN** below.

If you are a **sole proprietor** and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are an **LLC** that is **disregarded as an entity** separate from its owner (see ***Limited liability company (LLC)*** above), and are owned by an individual, enter your SSN (or "pre-LLC" EIN, if desired). If the owner of a disregarded LLC is a corporation, partnership, etc., enter the owner's EIN.

Note: *See the chart on this page for further clarification of name and TIN combinations.*

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get **Form SS-5,** Application for a Social Security Card, from your local Social Security Administration office. Get **Form W-7,** Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN or **Form SS-4,** Application for Employer Identification Number, to apply for an EIN. You can get Forms W-7 and SS-4 from the IRS by calling 1-800-TAX-FORM (1-800-829-3676) or from the IRS's Internet Web Site at **www.irs.go**v.

If you do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: *Writing "Applied For" means that you have already applied for a TIN* ***or*** *that you intend to apply for one soon.*

Part II—For U.S. Payees Exempt From Backup Withholding

Individuals (including sole proprietors) are **not** exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends. For more information on exempt payees, see the separate Instructions for the Requester of Form W-9.

If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding. Enter your correct TIN in Part I, write "Exempt" in Part II, and sign and date the form.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

Part III—Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 3, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required).

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item **2** in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item **2** of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a non-employee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified state tuition program payments, IRA or MSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to give your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA or MSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia to carry out their tax laws.

You must provide your TIM whether or not you are required to file a tax return. Payers must generally withhold 31% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

What Name and Number To Give the Requestor

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account [1]
3. Custodian account of a minor (Uniform Gift to Minors Act)	The Minor [2]
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee [1]
b. So-called trust account that is not a legal or valid trust under state law	The actual owner [1]
5. Sole proprietorship	The owner [3]
For this type of account:	**Give name and EIN of:**
6. Sole Proprietorship	The owner [3]
7. A valid trust, estate, or pension trust	Legal entity [4]
8. Corporate	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

[1] List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

[2] Circle the minor's name and furnish the minor's SSN.

[3] You must show your individual name, but you may also enter your business or "DBA" name. You may use either your SSN or your EIN (if you have one).

[4] List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

Note: *If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.*