

COMPLIANCE AND ENFORCEMENT DIRECTIVE

NOP C&E #04.01

From time to time, NOP issues Compliance and Enforcement Directives to certifying agents concerning issues that arise related to the National Organic Standards as published in 7 CFR Part 205. These Compliance and Enforcement Directives are organized according to sections of the regulation, but may also be found under broad heading topics of: crops, livestock, handling/processing, labeling, and the National List. You may reach us by mail or fax at: National Organic Program, Room 4008 South Bldg., 14th & Independence Avenue, Washington, DC 20250; fax (202) 205-7808.

Section(s): 7 CFR §§ 205.201(2), 205.206(e), and 205.601(m)

Topic(s): Pesticide Use

Issue(s): We have been asked to clarify how accredited certifying agents are to enforce the prohibition on the use of pesticides containing List 3 Inert ingredients.

Answer: If the certifying agent and producer, after reasonable effort (contacting the manufacturer, EPA, and other USDA accredited certifying agents) are unable to ascertain whether inerts in a pesticide are allowed under the NOP, the certifying agent will approve that part of the organic production system plan. The certifying agent will inform the producer of the requirement to immediately stop use of the pesticide upon determination that the pesticide contains a prohibited inert. This notification must be documented. There will be no adverse impact on the operation's certification until such notification is received by the producer. If the producer uses the pesticide after receiving this notification, the certifying agent will initiate revocation enforcement action.

What the Standards Say:

Section 205.201 (2) provides that the organic production plan must include a list of each substance to be used as a production input, indicating its composition, source, and location(s) where it will be used.

Section 205.206 (e) provides that when practices provided for in paragraphs (a) through (d) are insufficient to prevent or control crop pests, weeds, and diseases, the producer may use synthetic substances listed in § 205.601 of the National List.

Section 205.601 (m) provides that EPA List 4 inert ingredients may be used with substances used as active pesticide ingredients that are listed in § 205.601. This section also provides that EPA List 3 inerts may only be used in passive pheromone dispensers.

What the Preamble Says:

Final Rule page 80558 *General Requirements*. The organic system plan is the

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forum through which the producer or handler and certifying agent collaborate to define, on a site-specific basis, how to achieve and document compliance with the requirements of certification. The organic system plan commits the producer or handler to a sequence of practices and procedures resulting in an operation that complies with every applicable provision in the regulations. Accreditation qualifies the certifying agent to attest to whether an organic system plan comports with the organic standard. The organic system plan must be negotiated, enacted, and amended through an informal dialogue between certifying agent and producer or handler, and it must be responsive to the unique characteristics of each operation.

The second element that must be included in an organic system plan is information on the application of substances to land, facilities, or agricultural products. This requirement encompasses both natural and synthetic materials allowed for use in production and handling operations.

Final Rule page 80612 General Requirements. The Environmental Protection Agency (EPA) regulates and maintains the EPA Lists of Inert ingredients used for pesticide[s]. In this final rule, EPA Inerts List 1 and 2 are prohibited, EPA List 3 is also prohibited unless specifically recommended as allowed by the NOSB, and EPA List 4 Inerts are allowed unless specifically prohibited.

Directive: This directive is consistent with OFPA and 7 CFR Part 205. Section 205.201 requires that the organic producer identify all pesticides intended for use on an organic operation in the organic production system plan.

The producer's organic production system plan must be agreed to by a USDA accredited certifying agent, who will review the plan to determine, among other things, whether the pesticides listed may be used under the NOP.

The producer must not use a pesticide that contains an active ingredient that is not on the National List or a pesticide containing an EPA List 1 inert (EPA requires identification of List 1 inerts on the product label). When a certified producer uses such pesticides the certifying agent must initiate procedures to revoke certification. When a producer seeking certification has used such pesticides, within three years of when the first crop will be harvested, the certifying agent must deny certification on that land.

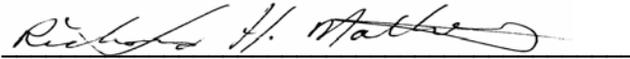
When the producer intends to use a pesticide containing an active ingredient that is listed in section 205.601 of the National List and the pesticide does not contain an EPA List 1 inert, the certifying agent and farmer will work together to determine whether the pesticide contains EPA List 2, 3, or 4 inerts.

Pesticides containing active ingredients listed in section 205.601 of the National List and *only EPA List 4 inerts can be approved* for use in organic production.

Pesticides containing active ingredients listed in section 205.601 of the National List and *EPA List 2 or 3 inerts must not be approved for use* in organic production. Their use will lead to revocation or denial of certification.

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If the certifying agent and producer, after reasonable effort (contacting the manufacturer, EPA, and other USDA accredited certifying agents) are unable to ascertain whether inerts in a pesticide are allowed under the NOP, the certifying agent will approve that part of the organic production system plan. The certifying agent will inform the producer of the requirement to immediately stop use of the pesticide upon determination that the pesticide contains a prohibited inert. This notification must be documented. There will be no adverse impact on the operation's certification until such notification is received by the producer. If the producer uses the pesticide after receiving this notification, the certifying agent will initiate revocation enforcement action.



Richard H. Mathews
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National Organic Program

April 23, 2004
Date Approved

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