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## **NOP Proposed Rule: Inert Ingredients in Pesticides** **for Organic Production**

*Public comment deadline is November 1, 2022*

The National Organic Program (NOP) has published an advanced notice of proposed rulemaking (ANPR) on Inert Ingredients in Pesticides for Organic Production. This rule would amend the NOP regulations regarding the ingredients that are allowed in formulations of inputs used in weed, pest, and disease control. Pesticides by EPA definitions include sanitizers, insecticides, herbicides, fungicides, rodenticides and other inputs used in the control of pests and diseases across all scopes of organic certification. A brief summary of the proposed rule is included in this letter. Full text of the proposed rule can be found at <https://bit.ly/PCOInert>, or contact the PCO office for a hard copy. The NOP will accept written comments on this ANPR until November 1, 2022. See below for instructions for how to submit comments.

### **Summary**

Current USDA organic regulations allow EPA List 3 and List 4 inert ingredients for usage in pesticide formulations as long as the active ingredient in the formulation is in compliance with organic regulations. Both lists (List 3 and List 4) include more than 2,700 inputs that can be used as inerts or other ingredients. Unfortunately, these lists have not been updated by the EPA since 2004.

USDA NOP is seeking comments in search of an alternative process for how to rectify the USDA regulatory references to outdated EPA policies and lists on inert ingredients with the intention of revising the USDA organic regulations. Specifically, AMS seeks comment on feasible alternatives to the allowance of EPA List 3 and List 4, unforeseen legal and regulatory challenges not mentioned in this ANPR, estimated impacts to industry of each option, and preferred method (or combination of methods) for addressing these listings.

### **Background**

Inert ingredients also known as "other ingredients" on pesticide labels can increase effectiveness, add selectivity, increase shelf life of inputs, or serve other purposes in the formulation of the pesticide. Currently, the organic regulations prohibit inert ingredients that are EPA List 1 and List 2. Inerts listed as EPA List 3 are listed on the National List with their use restricted for use in crop production only in passive pheromone dispensers. EPA List 4 inerts are also listed on the National List categorically meaning all List 4 inerts are allowed since there currently aren't any that are explicitly prohibited. Due to the large number of inert ingredients on these lists, USDA NOP referenced the lists instead of listing each substance individually.

EPA is now mandated to develop tolerances and tolerance exemptions for these inert ingredients used in food contact products. These tolerances are coded in 40 CFR Part 180 so the EPA Lists referenced by

the NOP are no longer updated. Although there have been two separate proposals to replace the EPA Lists, neither have been finalized as a rule and they both presented individual problems. Both of those proposals are part of the full ANPR linked above and the options summarized below.

### ***Potential Replacements for EPA List 3 and/or List 4***

In this ANPR, the USDA Agricultural Marketing Service proposes five potential options for updating references to inert ingredients in the USDA regulations. These options will be called Option A to Option E to match the ANPR to this summary letter:

- A. Allow inert ingredients permitted by EPA in minimum risk pesticides:** This option would replace the reference to EPA List 4 to inert ingredients in Table 2 at 40 CFR 125.25(f). Table 2 contains 289 inert ingredients at this time while EPA List 4 contains over 800 ingredients.
- B. Allow specific inert ingredients permitted by EPA:** This option would replace the reference to EPA List 4 to inert ingredients in 40 CFR Part 180 subpart D (180.900-180.1381). Active ingredients in subpart D would not be allowed as an inert.
- C. Replace EPA List 3 with EPA allowed inert ingredients of semiochemical dispensers:** This option would only replace ingredients on List 3 which addresses pheromone dispensers and USDA AMS recognizes it as a partial solution.
- D. List inert ingredients individually on the National List:** This option would replace List 3 and/or List 4 inert ingredients by migrating them to the USDA organic regulations at 7 CFR part 205 as individual itemized or grouped listings.
- E. Take no action (Status Quo):** EPA has revoked the use of certain List 4 inert ingredients conflicting with organic regulation. USDA NOP has identified multiple issues with this option that are listed the full ANPR.

### ***The NOP is specifically requesting comments on the following topics:***

1. Challenges related to referencing on and relying third party lists within the National List.
2. Challenges related to individually listing all inert ingredients on the National List.
3. What problems are caused by the current references to EPA List 3 and List 4?
4. What other options might be available that AMS and NOSB have not considered?
5. If inert ingredients are individually listed, which set of substances from EPA List 3 and List 4 should be initially migrated to the National List and how should those ingredients be identified?
6. Has the established petition process to amend the National List for addition or removal of substances met the needs of the organic industry?
7. Should AMS permit all EPA inert ingredients of no toxicological concern in organic production? What are the risks and benefits?
8. If any inert ingredient allowed by EPA is of concern under USDA organic regulations, what are those substances and why should they not be permitted?

***Instructions for Submitting Comments:*** Comments must be received by 11:59PM ET November 1, 2022 and must reference the docket number AMS-NOP-21-0008-0001. Submit written comments online via the link <https://bit.ly/PCOInertsComment>

Please contact me if you have any questions at [hnunez@paorganic.org](mailto:hnunez@paorganic.org) or (814) 422-0251 Ext. 284.

Best,

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