

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 205

[Docket Number TM-04-01FR]

RIN 0581-AC35

#### National Organic Program (NOP); Amendments to the National List of Allowed and Prohibited Substances (Crops and Processing)

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

**ACTION:** Final rule.

**SUMMARY:** This final rule would amend the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) regulations to reflect recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) from November 15, 2000, through March 3, 2005. Consistent with the recommendations from the NOSB, this final rule adds thirteen substances, along with any restrictive annotations, to the National List. This final rule also amends the mailing address for where to file a Certification or Accreditation appeal.

**EFFECTIVE DATE:** This rule becomes effective September 12, 2006.

**FOR FURTHER INFORMATION CONTACT:** Bob Pooler, Agricultural Marketing Specialist, Telephone: (202) 720-3252; Fax: (202) 205-7808.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 21, 2000, the Secretary established, within the NOP [7 CFR part 205], the National List regulations (§§ 205.600 through 205.607). The National List identifies synthetic substances and ingredients that are allowed and nonsynthetic (natural)

substances and ingredients that are prohibited for use in organic production and handling. Under the authority of the Organic Foods Production Act of 1990 (OFPA), as amended, (7 U.S.C. 6501 *et seq.*), the National List can be amended by the Secretary based on proposed amendments developed by the NOSB. Since established, the National List has been amended three times, October 31, 2003 (68 FR 61987), November 3, 2003 (68 FR 62215), and October 21, 2005 (70 FR 61217).

This final rule amends the National List to reflect recommendations submitted to the Secretary by the NOSB from November 15, 2000, through March 3, 2005. Between the specified time period, the NOSB has recommended that the Secretary add four substances to § 205.601 and eleven substances to § 205.605 of the National List regulations. This final rule also amends the mailing address for where to file a Certification or Accreditation appeal pursuant to § 205.681(d).

##### II. Overview of Amendments

The following provides an overview of the amendments made to designated sections of the National List regulations:

##### *Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production*

This final rule amends the following inert ingredient to § 205.601 of the National List regulations:

Glycerine oleate (Glycerol monooleate) (CAS # 37220-82-9)—for use only until December 31, 2006.

This final rule amends the following seed preparation to § 205.601 of the National List regulations:

Hydrogen chloride (CAS # 7647-01-0)—for delinting cotton seed for planting.

This final rule amends the following slug and snail bait to § 205.601 of the National List regulations:

Ferric phosphate (CAS # 10045-86-0).

##### *Section 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))"*

This final rule amends § 205.605(a) of the regulations by adding the following substances:

Egg white lysozyme (CAS # 9001-63-2).

L-Malic acid (CAS # 97-67-6).

Microorganisms—any food grade bacteria, fungi, and other microorganisms.

This final rule also amends § 205.605(b) of the regulations by adding the following substances:

Activated charcoal (CAS #s 7440-44-0; 64365-11-3)—only from vegetative sources; for use only as a filtering aid.

Cyclohexylamine (CAS # 108-91-8)—for use only as a boiler water additive for packaging sterilization.

Diethylaminoethanol (CAS # 100-37-8)—for use only as a boiler water additive for packaging sterilization.

Octadecylamine (CAS # 124-30-1)—for use only as a boiler water additive for packaging sterilization.

Peracetic acid/Peroxyacetic acid (CAS # 79-21-0)—for use in wash and/or rinse water according to FDA limitations. For use as a sanitizer on food contact surfaces.

Sodium acid pyrophosphate (CAS # 7758-16-9)—for use only as a leavening agent.

Tetrasodium pyrophosphate (CAS # 7722-88-5)—for use only in meat analog products.

##### *Section 205.681 Appeals*

This final rule amends § 205.681(d)(1) of the regulations by updating the mailing address for where to file a Certification or Accreditation appeal as follows: Administrator, USDA, AMS, c/o NOP Appeals Staff, Stop 0203, Room 302-Annex, 1400 Independence Avenue, SW., Washington, DC 20250-0203.

##### III. Related documents

Seven notices and one proposed rule (70 FR 54660, September 16, 2005) were published regarding the meetings of the NOSB and its deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this final rule were announced for NOSB deliberation in the following **Federal Register** Notices: (1) 65 FR 64657, October 30, 2000, (Peracetic acid); (2) 66 FR 48654, September 21, 2001, (Ammonium hydroxide, Cyclohexylamine, and Octadecylamine); (3) 67 FR 19375, April 19, 2002, (Diethylaminoethanol); (4) 67 FR 54784, August 26, 2002, (Activated charcoal); (5) 68 FR 23277, May 1, 2003,

(Egg white lysozyme, Glycerine oleate, L-Malic acid, Microorganisms, Sodium acid pyrophosphate and Tetrahydrofurfuryl alcohol); (6) 69 FR 18036, April 6, 2004, (Hydrogen Chloride, and Tetrasodium pyrophosphate); and (7) 70 FR 7224, February 11, 2005, (Ferric phosphate).

#### IV. Statutory and Regulatory Authority

The OFPA, as amended (7 U.S.C. 6501 *et seq.*), authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of OFPA authorizes the NOSB to develop proposed amendments to the National List for submission to the Secretary and establishes a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List, respectively. The National List petition process is implemented under § 205.607 of the NOP regulations. The current petition process (65 FR 43259) can be accessed through the NOP Web site at <http://www.ams.usda.gov/nop>.

##### A. Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

##### B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under § 2115 of the OFPA (7 U.S.C. 6514) from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in § 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under §§ 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to § 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the

production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to § 2120(f) of the OFPA (7 U.S.C. 6519(f)), this final rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, the Agricultural Marketing Service (AMS) performed an economic

impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). The AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this final rule would not be significant. The effect of this final rule would be to allow the use of additional substances in agricultural production and handling. This action would relax the regulations published in 7 CFR part 205 and would provide small entities with more tools to use in day-to-day operations. The AMS concludes that the economic impact of this addition of allowed substances, if any, would be minimal and entirely beneficial to small agricultural service firms. Accordingly, USDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$6,500,000 and small agricultural producers are defined as those having annual receipts of less than \$750,000. This final rule would have an impact on a substantial number of small entities.

The U.S. organic industry at the end of 2001 included nearly 6,949 certified organic crop and livestock operations. These operations reported certified acreage totaling more than 2.09 million acres of organic farm production. Data on the numbers of certified organic handling operations (any operation that transforms raw product into processed products using organic ingredients) were not available at the time of survey in 2001; but they were estimated to be in the thousands. By the end of 2004, the number of certified organic crop, livestock, and handling operations totaled nearly 11,400 operations. Based on 2003 data, certified organic acreage increased to 2.2 million acres.

U.S. sales of organic food and beverages have grown from \$1 billion in 1990 to an estimated \$12.2 billion in 2004. Organic food sales are projected to reach \$14.5 billion for 2005; total U.S. organic sales, including nonfood uses, are expected to reach \$15 billion in 2005. The organic industry is viewed as the fastest growing sector of agriculture, representing 2 percent of overall food and beverage sales. Since 1990, organic retail sales have historically demonstrated a growth rate between 20 to 24 percent each year. This growth rate is projected to decline and fall to a rate of 5 to 10 percent in the future.

In addition, USDA has accredited 96 certifying agents who have applied to

USDA to be accredited in order to provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at <http://www.ams.usda.gov/nop>. AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

#### D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulation at 5 CFR part 1320. AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the option of submitting information of transaction business electronically to the maximum extent possible.

#### E. Discussion of Comments Received

Twenty-nine (29) comments were received on proposed rule TM-04-01. In general, comments favored amending the National List with the proposed substances identified in the proposed rule. However, there were some commenters that raised concerns with proposed restrictions to the use of substances being added to § 205.605(b) and the expiration date attached to the use of ammonium hydroxide. A few commenters, suggested technical changes to the CAS numbers for glycerine oleate. These same commenters asserted that tetrasodium pyrophosphate and sodium acid pyrophosphate should not be added to the National List. We also received a comment asking the USDA to "clarify that the category of 'microorganisms' also includes food grade by-products derived from microorganisms that exhibit similar characteristics or functions as the microorganism."

#### Changes Made Based on Comments

The following changes are made based on comments received.

First, Restriction to Use of Substances on § 205.605(b). The proposed rule restricted the use of synthetic substances being added to § 205.605(b). It restricted the synthetic substances to the handling of agricultural products labeled "made with organic (specified ingredients or food group(s)) and prohibited the use of the proposed synthetic substances in handling agricultural products labeled as

"organic." Commenters, however, were largely opposed to restricting the use of the proposed synthetic substances to products labeled as "made with organic (specified ingredients or food group(s))."

The proposed rule restricted the use of these substances because of the final judgment and order in the case of *Harvey v. Johanns*, issued on June 9, 2005, by the United States District Court, District of Maine. The district court ruled that 7 CFR 205.600(b) and 205.605(b) of the National List regulations are contrary to the OFPA and exceed the Secretary's rulemaking authority to the extent that they permit the addition of synthetic ingredients and processing aids in handling and processing of agricultural products which contain a minimum of 95 percent organic content and which are eligible to bear the USDA seal. Due to this ruling by the district court, the USDA determined that any new additions to the National List would have to comply with the court's order.

However, in October 2005, Congress voted to amend § 6517 of the OFPA to permit the use of certain synthetic substances in organic handling. Therefore, we agree with the commenters and have removed the restrictive language from substances being added to § 205.605(b) of the National List.

Second, Glycerine Oleate CAS #. In proposing glycerine oleate for addition to the National List, the proposed rule identified the substance with the following CAS #s: 111-03-5, 25496-72-4, and 37220-82-9. Commenters stated that the listing of CAS #s 111-03-5 and 25496-72-4 are incorrect and not necessary because they now appear on the EPA's List 4A. Inert substances that appear on the EPA's List 4a are already permitted for use in organic crop production under the National List regulations.

We agree with the commenters and have removed the CAS #s 111-03-5 and 25496-72-4 from the listing of glycerine oleate.

Third, Ammonium Hydroxide Expiration Date. Based on the recommendation from the NOSB in October 2001, ammonium hydroxide was proposed for inclusion on the National List with an expiration date of October 21, 2005. Most commenters supported the inclusion of ammonium hydroxide on the National List and requested that the expiration date be amended to acknowledge the three years that the NOSB had intended to allow the use of the substance. Some commenters expressed the view that ammonium hydroxide should not be added to the National List. They

asserted that processors have managed without use of the substance in the last four years and suggest that there are a number of alternatives to ammonium hydroxide for boiler maintenance.

We have taken into account the concerns of the commenters. However, the expiration date recommended by the NOSB for the use of ammonium hydroxide has lapsed. As a result, ammonium hydroxide is not being added to the National List at this time. To be reconsidered for inclusion on the National List, the NOSB will have to submit a new recommendation to the Secretary to amend the National List to permit the use of ammonium hydroxide.

Fourth, Non-Inclusion of Tetrahydrofurfuryl Alcohol (THFA). The NOSB recommended the inclusion of THFA to the National List, with the restriction that it could only be used until December 21, 2006. THFA was petitioned for use in organic crop production as an inert pesticidal ingredient. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the EPA had registered THFA as a List 3 inert (Inerts of Unknown Toxicity). However, the EPA is currently evaluating THFA for reassessment under the Food Quality Protection Act (FQPA) and has identified risks of concern that require the use of THFA as an inert ingredient in pesticide products to be significantly limited. Based on consultations with the EPA concerning the future use of THFA, the Secretary has been advised to withhold listing THFA as an allowed substance on the National List. Due to potential risk issues associated with THFA's use in crop production, the Secretary will wait until the EPA has concluded its reassessment of the substance before reconsidering its inclusion to the National List. The EPA's proposed rulemaking for proposed action on THFA can be found in the **Federal Register**, 71 FR 18689 (April 12, 2006).

#### Changes Requested But Not Made

First, Sodium Acid Pyrophosphate. The NOSB recommended the use of sodium acid pyrophosphate at its May 2003, meeting in Austin, TX. After the May meeting, the NOP requested that the NOSB submit documentation that would reflect how the recommended substance met the evaluation criteria specified in §§ 6517 and 6518 of the OFPA, before the recommended substance would be considered by the Secretary for proposed rulemaking. The NOSB submitted the documentation as requested by the NOP. The NOP, in turn, reviewed and used the documentation to draft a proposed rule

for adding sodium acid pyrophosphate to the National List.

In response to the proposed rule, a few commenters stated that the NOP did not make all supporting documentation (the NOSB decision sheet checklist and a supplemental technical review used by the NOSB to evaluate sodium acid pyrophosphate) available to the public for consideration in developing comments regarding the addition of sodium acid pyrophosphate to the National List. They asserted that sodium acid pyrophosphate should be tabled until all supporting information for sodium acid pyrophosphate is made available to the public.

The NOSB decision sheet checklist and supplemental technical review for sodium acid pyrophosphate were not posted on the NOP Web site during the public comment period for the proposed rule TM-04-01. However, all documents related to the review of substances for inclusion on the National List are always available to the public through the NOP office. If the public is aware that such a document is not available on the NOP Web site, a request may always be submitted to the NOP to receive the related documents. Taking into account the commenters' position regarding easy accessibility to materials review documents, we do not believe their position warrants the NOP deferring final action on the substance. Evidence has not been submitted that would suggest sodium acid pyrophosphate violates the evaluation criteria specified in the OFPA.

Second, Tetrasodium Pyrophosphate. A few commenters opposed the addition of tetrasodium pyrophosphate on the National List because of reasons that were expressed in an earlier proposed rule (68 FR 27941, May 22, 2003). Commenters had stated that the use of tetrasodium pyrophosphate conflicts with § 205.600(b)(4) of the NOP regulations. They also stated that the annotation associated with tetrasodium pyrophosphate is too vague.

The NOP disagrees with the commenters. The NOP specifically referred tetrasodium pyrophosphate back to the NOSB, as a result of receiving such comments in response to the May 2003, proposed rule. The NOP charged the NOSB with determining whether the proposed use of tetrasodium pyrophosphate conflicts with § 205.600(b)(4) of the NOP regulations. Through further review and deliberation at their April 2004, meeting in Chicago, IL, the NOSB determined that the proposed use of tetrasodium pyrophosphate did not conflict with § 205.600(b)(4) of the NOP regulations. In response to the concerns of the

commenters, the NOSB provided that the primary use of tetrasodium pyrophosphate, as petitioned, is not to serve as a preservative, or to "recreate" flavor, color or texture. They acknowledged that the substance may be used to create texture; however, it is not being used to "recreate" texture, as is referenced in § 205.600(b)(4) of the regulations.

Third, Microorganisms. A commenter requested the NOP to "clarify that the category of 'microorganisms' also includes food grade by-products derived from microorganisms that exhibit similar characteristics or functions as the microorganism." The NOP does not have enough information to address this commenter's concern. His request must be evaluated by the NOSB. As a result, the NOP instructs the commenter to submit a petition to the NOSB that would request evaluation of the types of substances for which he seeks clarification.

*F. Effective Date*

This final rule reflects recommendations submitted to the Secretary by the NOSB. The thirteen substances being added to the National List were based on petitions from the industry and evaluated by the NOSB using criteria in the Act and the regulations. Because these substances are critical to organic production and handling operations, producers and handlers should be able to use them in their operations as soon as possible. Accordingly, AMS finds that good cause exists under 5 U.S.C. 553(d)(3) for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 205**

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

■ For the reasons set forth in the preamble, 7 CFR part 205, Subpart G is amended as follows:

**PART 205—NATIONAL ORGANIC PROGRAM**

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

**Authority:** 7 U.S.C. 6501–6522.

- 2. Section 205.601 is amended by:
  - a. Revising paragraph (h).
  - b. Revising paragraph (m)(2).
  - c. Adding a new paragraph (n).
  - d. Reserving paragraphs (o)–(z).

The revisions and additions read as follows:

**§ 205.601 Synthetic substance allowed for use in organic crop production.**

\* \* \* \* \*

(h) As slug or snail bait. Ferric phosphate (CAS # 10045–86–0).

\* \* \* \* \*

(m) \* \* \*

(2) EPA List 3—Inerts of Unknown Toxicity allowed:

(i) Glycerine Oleate (Glycerol monooleate) (CAS #s 37220–82–9)—for use only until December 31, 2006.

(ii) Inerts used in passive pheromone dispensers.

(n) Seed preparations. Hydrogen chloride (CAS # 7647–01–0)—for delinting cotton seed for planting.

\* \* \* \* \*

- 3. Section 205.605 is amended by:
  - a. Adding three materials to paragraph (a).
  - b. Adding seven new substances to paragraph (b).

The additions read as follows:

**§ 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))."**

\* \* \* \* \*

(a) \* \* \*

\* \* \* \* \*

Egg white lysozyme (CAS # 9001–63–2)

\* \* \* \* \*

L-Malic acid (CAS # 97–67–6).

\* \* \* \* \*

Microorganisms—any food grade bacteria, fungi, and other microorganism.

\* \* \* \* \*

(b) \* \* \*

Activated charcoal (CAS #s 7440–44–0; 64365–11–3)—only from vegetative sources; for use only as a filtering aid.

\* \* \* \* \*

Cyclohexylamine (CAS # 108–91–8)—for use only as a boiler water additive for packaging sterilization.

Diethylaminoethanol (CAS # 100–37–8)—for use only as a boiler water additive for packaging sterilization.

\* \* \* \* \*

Octadecylamine (CAS # 124–30–1)—for use only as a boiler water additive for packaging sterilization.

\* \* \* \* \*

Peracetic acid/Peroxyacetic acid (CAS # 79–21–0)—for use in wash and/or rinse water according to FDA limitations. For use as a sanitizer on food contact surfaces.

\* \* \* \* \*

Sodium acid pyrophosphate (CAS # 7758-16-9)—for use only as a leavening agent.

\* \* \* \* \*

Tetrasodium pyrophosphate (CAS # 7722-88-5)—for use only in meat analog products.

\* \* \* \* \*

■ 4. In § 205.681, paragraph (d)(1) is revised to read as follows:

**§ 205.681 Appeals.**

\* \* \* \* \*

(d) \* \* \* (1) Appeals to the Administrator must be filed in writing and addressed to: Administrator, USDA, AMS, c/o NOP Appeals Staff, Stop 0203, Room 302-Annex, 1400 Independence Avenue, SW., Washington, DC 20250-0203.

\* \* \* \* \*

Dated: September 5, 2006.

**Lloyd C. Day, Administrator,**

*Agricultural Marketing Service.*

[FR Doc. E6-14923 Filed 9-8-06; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1290

[Docket No. FV06-1290-1 FR]

RIN 0581-AC59

#### Specialty Crop Block Grant Program

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

**ACTION:** Final rule.

**SUMMARY:** This rule provides regulations to implement the Specialty Crop Block Grant Program (SCBGP) to enhance the competitiveness of specialty crops. This action establishes the eligibility and application requirements, the review and approval process, and grant administration procedures for the SCBGP.

The SCBGP is authorized under Section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note).

**EFFECTIVE DATE:** October 11, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Trista Etzig, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0243, Washington, DC 20250-0243; Telephone: (202) 690-4942; Fax: (202) 690-0102; or e-mail: [trista.etzig@usda.gov](mailto:trista.etzig@usda.gov).

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 by the Office of Management and Budget (OMB).

#### Public Law 104-4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State and local governments and the private sector. Under section 202 of the UMRA, the Agricultural Marketing Service (AMS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State and local governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1532). When such a statement is needed for a rule, section 205 of the UMRA generally requires federal agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule (2 U.S.C. 1535).

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State and local governments or the private sector of \$100 million or more in any one year. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

#### Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.169, Specialty Crop Block Grant Program.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V published at 48 FR 29115 (June 24, 1983).

#### Executive Order 13132

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule would not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

#### Regulatory Flexibility Act

The AMS certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-534, as amended (5 U.S.C. 601 *et seq.*). This rule only will impact State departments of agriculture that apply for grant funds. States include the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico. The States are not small entities under the Act.

#### Authority for a Specialty Crop Block Grant Program

This program is intended to accomplish the goals of increasing fruit, vegetable, and nut consumption and improving the competitiveness of United States specialty crop producers. The SCBGP is authorized under section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note). Section 101 directs the Secretary of Agriculture to make grants to States for each of the fiscal years 2005 through 2009 to be used by State departments of agriculture solely to enhance the competitiveness of specialty crops.

#### Background

The Fruit and Vegetable Program will periodically announce that applications may be submitted for participation in a "Specialty Crop Block Grant Program" (SCBGP), which will be administered by personnel of the Agricultural Marketing Service (AMS).

Periodically, funding may be appropriated to the Secretary of Agriculture to provide specialty crop block grants. To the extent that funds are available, each year the AMS will publish a **Federal Register** notice announcing the program and soliciting grant applications.

Subject to the appropriation of funds, each State that submits an application that is reviewed and approved by AMS is to receive at least \$100,000 to enhance the competitiveness of specialty crops. In addition, each State will receive an amount that represents the proportion of the value of specialty crop production in the state in relation