

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 205

[Docket Number AMS-TM-06-0222; TM-04-07PR]

RIN 0581-AC51

#### National Organic Program, Sunset Review

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed 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 17, 2005 through October 19, 2006. The recommendations addressed in this proposed rule pertain to the continued exemption (use) and prohibition of 169 substances in organic production and handling. Consistent with the recommendations from the NOSB, this proposed rule would renew 166 of the 169 exemptions and prohibitions on the National List (along with any restrictive annotations), and remove 3 exemptions from the National List.

**DATES:** Comments must be received by May 7, 2007.

**ADDRESSES:** Interested persons may comment on this proposed rule using the following procedures:

- **Mail:** Comments may be submitted by mail to: Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA-AMS-TMP-NOP, 1400 Independence Ave., SW., Room 4008-So., Ag Stop 0268, Washington, DC 20250.

- **Internet:** [www.regulations.gov](http://www.regulations.gov).
- Written comments on this proposed rule should be identified with the docket number TM-04-07. Commenters should identify the topic and section

number of this proposed rule to which the comment refers.

- Clearly indicate if you are for or against the proposed rule or some portion of it and your reason for it. Include recommended language changes as appropriate.

- Include a copy of articles or other references that support your comments. Only relevant material should be submitted.

It is our intention to have all comments to this proposed rule, whether submitted by mail, or Internet, available for viewing on the [regulations.gov](http://regulations.gov) homepage. Comments submitted in response to this proposed rule will be available for viewing in person at USDA-AMS, Transportation and Marketing, Room 4008-South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720-3252.

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

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Organic Foods Production Act (OFPA), 7 U.S.C. 6501 *et seq.*, authorizes the establishment of the National List of allowed and prohibited substances. The National List identifies synthetic substances (synthetics) that are exempted (allowed) and nonsynthetic substances (nonsynthetics) that are prohibited in organic crop and livestock production. The National List also identifies nonsynthetics and synthetics that are exempted for use in organic handling.

The exemptions and prohibitions granted under the OFPA are required to be reviewed every 5 years by the NOSB. The Secretary of Agriculture has authority under the OFPA to renew such exemptions and prohibitions. If they are not reviewed by the NOSB within 5 years of their inclusion on the National List and renewed by the Secretary, their authorized use or prohibition expires. This means that a synthetic substance exempted for use on

the National List in 2002 and currently allowed for use in organic production will no longer be allowed for use after October 21, 2007; a non-synthetic substance prohibited from use on the National List in 2002 and currently prohibited from use in organic production will be allowed after October 21, 2007; and a synthetic or nonsynthetic substance exempted for use on the National List and currently allowed for use in organic handling will be prohibited after October 21, 2007.

In response to the sunset provisions in the OFPA, the Secretary published an Advanced Notice of Proposed Rulemaking (ANPR) (70 FR 35177) in the **Federal Register** on June 17, 2005, to announce the review of 174 exemptions and prohibitions authorized under the National Organic Program regulations. This ANPR also requested public comment on the continued use or prohibition of such exemptions and prohibitions. The public comment period lasted 60 days.

We received approximately 350 comments. Comments were received from consumers, producers, certifying agents, trade associations, retailers, organic associations, animal welfare organizations, consumer groups, the NOSB, and various industry groups.

In general, we received comments urging the current list to remain intact as it currently exists with many providing specific focused support for materials that they promoted, represented, or relied upon. One commenter strongly advocated for a careful review of the materials up for sunset review and not just a blanket approval. In particular, the commenter emphasized the need for additional technical review of the general categories of flavors, colors, vitamins and minerals used in handling; aquatic plant products, fish products, humic acid derivatives, antibiotics used in crops; and chlorine materials used as sanitizers in crops, livestock and handling.

The NOSB reviewed the comments received on the ANPR and used the comments to make recommendations to the Secretary regarding the continued use and prohibition of the 169 substances under review. Three meetings were held for the NOSB to deliberate and make recommendations to the Secretary. The first meeting was held on November 16-17, 2005, in

Washington, DC. The second meeting was held on April 19–20, 2006, in State College, PA. The third meeting was held on October 17–19, 2006, in Arlington, VA. All three meetings were open to the public and additional comments were received during the meetings.

As a result of the November 2005, and 2006 April and October NOSB meetings, the NOSB recommended that the Secretary renew 166 of the 169 exemptions and prohibitions on the National List; and remove 3 exemptions from the National List. These recommendations are limited to those exemptions and prohibitions that were originally included on the National List on October 21, 2002. The Secretary is engaging in this proposed rulemaking to reflect the recommendations of the NOSB, from November 2005, April 2006, and October 2006, and request public comment.

Under the authority of the 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 four times, October 31, 2003 (68 FR 61987), November 3, 2003 (68 FR 62215), October 21, 2005 (70 CFR 61217) and September 11, 2006 (71 FR 53299).

## II. Overview of Proposed Amendments

From November 17, 2005, through October 19, 2006, the NOSB reviewed 169 exemptions and prohibitions that are authorized on the National List and set to expire on October 21, 2007. [In the ANPR announcing this sunset review of substances (70 FR 35177, June 17, 2005), the original count of substances was quoted at 174 substances; however, there were a number of substances counted in technical error. As a result, the count has been corrected to reflect a total of 169 substances under review during this sunset process.] Using the evaluation criteria specified in the ANPR for sunset review, the NOSB reviewed these exemptions and prohibitions for continued authorization in organic agricultural production and handling. As a result of the NOSB's review, the NOSB recommended that the Secretary renew 166 of the 169 exemptions and prohibitions. In addition, the NOSB recommended that 3 exemptions not be renewed.

With respect to the criteria used to make recommendations regarding the continued authorization of exemptions and prohibitions, the NOSB agreed that decision making would be based on public comments and applicable supporting evidence that expressed a

continued need for the use or prohibition of the substance(s).

Concerning criteria used to make recommendations regarding the discontinuation of an authorized exempted synthetic substance or prohibited nonsynthetic substance, the NOSB agreed that decision making, for the exempted synthetic substance, would be based on public comments and applicable supporting evidence that demonstrated the currently authorized exempted or prohibited substance is (a) harmful to human health or the environment, (b) not necessary to the production of the agricultural products because of the availability of wholly nonsynthetic substitute products, or (c) inconsistent with organic farming and handling.

In the case of recommendations to discontinue prohibitions of nonsynthetic substances, the NOSB agreed that decision making would be based on public comments and applicable supporting evidence demonstrating that the prohibited nonsynthetic substance is no longer harmful to human health or the environment and is consistent and compatible with organic practices.

### Renewals

After considering all public comments and supporting evidence, the NOSB determined that 166 out of the 169 exemptions and prohibitions demonstrated a continued need for authorization in organic agricultural production and handling. Based on the recommendations from the NOSB concerning substances identified for review under this sunset review process, this proposed rule would amend the USDA's National regulations (7 CFR part 205) to renew exemptions and prohibitions of the following substances in organic agricultural production and handling (use categories and any restrictive annotations remain unchanged, but have been omitted from this overview):

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

1. Ethanol.
2. Isopropanol.
3. Calcium hypochlorite.
4. Chlorine dioxide.
5. Sodium hypochlorite.
6. Hydrogen peroxide.
7. Soap-based algicide/demossers.
8. Herbicides, soap-based.
9. Newspaper or other recycled paper, without glossy or colored inks.
10. Plastic mulch and covers.
11. Newspapers or other recycled paper, without glossy or colored inks.

12. Soaps, ammonium.
13. Ammonium carbonate.
14. Boric acid.
15. Elemental sulfur.
16. Lime sulfur-including calcium polysulfide.
17. Oils, horticultural-narrow range oils as dormant, suffocating, and summer oils.
18. Soaps, insecticidal.
19. Sticky traps/barriers.
20. Pheromones.
21. Sulfur dioxide.
22. Vitamin D<sub>3</sub>.
23. Copper hydroxide.
24. Copper oxide.
25. Copper oxychloride.
26. Copper sulfate.
27. Hydrated lime.
28. Hydrogen peroxide.
29. Lime sulfur.
30. Oils, horticultural, narrow range oils as dormant, suffocating, and summer oils.
31. Potassium bicarbonate.
32. Elemental sulfur.
33. Streptomycin.
34. Tetracycline (oxytetracycline calcium complex).
35. Aquatic plant extracts (other than hydrolyzed).
36. Elemental sulfur.
37. Humic acids.
38. Lignin sulfonate.
39. Magnesium sulfate.
40. Soluble boron products.
41. Sulfates.
42. Carbonates.
43. Oxides.
44. Silicate of zinc.
45. Silicate of copper.
46. Silicate of iron.
47. Silicate of manganese.
48. Silicate of molybdenum.
49. Silicate of selenium.
50. Silicate of cobalt.
51. Liquid fish products.
52. Vitamin B<sub>1</sub>.
53. Vitamin C.
54. Vitamin E.
55. Ethylene gas.
56. Lignin sulfonate.
57. Sodium silicate.
58. EPA List 4-Inerts of Minimal Concern.

#### Section 205.602 Nonsynthetic Substances Prohibited for Use in Organic Crop Production

1. Ash from manure burning.
2. Arsenic.
3. Lead salts.
4. Potassium chloride.
5. Sodium fluoaluminate (mined).
6. Sodium nitrate.
7. Strychnine.
8. Tobacco dust (nicotine sulfate).

#### Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

1. Ethanol.

2. Isopropanol.
3. Aspirin.
4. Vaccines.
5. Chlorhexidine.
6. Calcium hypochlorite.
7. Chlorine dioxide.
8. Sodium hypochlorite.
9. Electrolytes.
10. Glucose.
11. Glycerine.
12. Hydrogen peroxide.
13. Iodine.
14. Magnesium sulfate.
15. Oxytocin.
16. Ivermectin.
17. Phosphoric acid.
18. Copper sulfate.
19. Iodine.
20. Lidocaine.
21. Lime, hydrated.
22. Mineral oil.
23. Procaine.
24. Trace minerals.
25. Vitamins.
26. EPA List 4-Inerts of Minimal Concern.

Section 205.604 Nonsynthetic Substances Prohibited for Use in Organic Livestock Production

1. Strychnine.

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 Groups(s))"

(a) Nonsynthetics allowed:

1. Alginic acid.
2. Citric acid.
3. Lactic acid.
4. Bentonite.
5. Calcium carbonate.
6. Calcium chloride.
7. Carageenan.
8. Dairy cultures.
9. Diatomaceous earth.
10. Enzymes.
11. Flavors.
12. Kaolin.
13. Magnesium sulfate.
14. Nitrogen-oil-free grades.
15. Oxygen-oil-free grades.
16. Perlite.
17. Potassium chloride.
18. Potassium iodide.
19. Sodium bicarbonate.
20. Sodium carbonate.
21. Carnauba wax.
22. Wood resin wax.
23. Autolysate yeast.
24. Bakers yeast.
25. Brewers yeast.
26. Nutritional yeast.
27. Smoked yeast.

(b) Synthetics allowed:

1. Alginates.
2. Ammonium bicarbonate.

3. Ammonium carbonate.
4. Ascorbic acid.
5. Calcium citrate.
6. Calcium hydroxide.
7. Monobasic calcium phosphates.
8. Dibasic calcium phosphates.
9. Tribasic calcium phosphates.
10. Carbon dioxide.
11. Calcium hypochlorite.
12. Chlorine dioxide.
13. Sodium hypochlorite.
14. Ethylene.
15. Ferrous sulfate.
16. Monoglycerides.
17. Diglycerides.
18. Glycerin.
19. Hydrogen peroxide.
20. Lecithin—bleached.
21. Magnesium carbonate.
22. Magnesium chloride.
23. Magnesium stearate.
24. Nutrient vitamins.
25. Nutrient minerals.
26. Ozone.
27. Pectin (low-methoxy).
28. Phosphoric acid.
29. Potassium acid tartrate.
30. Potassium carbonate.
31. Potassium citrate.
32. Potassium hydroxide.
33. Potassium iodide.
34. Potassium phosphate.
35. Silicon dioxide.
36. Sodium citrate.
37. Sodium hydroxide.
38. Sodium phosphates.
39. Sulfur dioxide.
40. Tocopherols.
41. Xanthan gum.

Section 205.606 Nonorganically Produced Agricultural Products Allowed as Ingredients In or On Processed Products Labeled as "Organic"

1. Cornstarch (native).
2. Gums—water extracted only (arabic, guar, locust bean, carob bean).
3. Kelp—for use only as a thickener and dietary supplement.
4. Lecithin—unbleached.
5. Pectin (high-methoxy).

*Nonrenewals*

Based on recommendations from the NOSB concerning substances identified for review under this sunset review process, this proposed rule would amend the USDA's National List to remove exemptions (and any restrictive annotations) for the following substances in organic agricultural production and handling:

Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

Milk replacers without antibiotics, as emergency use only, no nonmilk

products or products from BST treated animals.

A milk replacer is a formula (powdered or liquid) designed to take the place of natural mother's milk by supplying the nutritional needs of the baby animal during the critical, early nursing stage of its life. Milk replacers traditionally contain milk-based ingredients as their major source of protein. However, as more milk proteins are being used by the human food industry, milk proteins are becoming more and more expensive to source.

The NOP regulations, at § 205.237(a), state that "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." In relation to this requirement, the National List, at § 205.603(c), provides that nonorganic milk replacers, without antibiotics and not from nonmilk products or products from Bovine somatotropin treated animals may be used, for emergency use only, as a feed supplement in organic livestock production. Due to the concern for the commercial availability of organic milk at the time of publication of the NOP regulations (December 21, 2000), this exemption was considered necessary to protect the interests of organic livestock producers and the health of organic young calves.

In reviewing public comments and evidence regarding the continued authorization of the use of milk replacers in organic agricultural livestock production, the NOSB determined that nonorganic milk replacers should no longer be permitted for use in organic livestock production. The NOSB based their decision on input and testimonies from organic livestock producers which stated that the use of such nonorganic agricultural feed supplements were not a necessity or widely utilized in organic livestock production. They also suggested that organic milk is commercially available and should be used to feed young animals that may need to be fed a milk replacer during their early stages of development. Since the full implementation of the NOP regulations and approximately four years of certified organic livestock production under such regulations, commenters expressed that there were not many emergency cases that justified the use of nonorganic milk replacers above organic

milk in the production of organic dairy animals.

There were a few comments that suggested that nonorganic milk replacers should remain available for use in organic livestock production. Such comments provided that it would be more expensive to use organic milk as a milk replacer than nonorganic milk because organic milk is a highly valued commodity for human consumption. Therefore, it would present more of an economic challenge to farmers to feed saleable organic milk to an animal, rather than selling the milk for human consumption.

After considering all input from the public and any applicable evidence, the NOSB maintained that nonorganic milk replacers should no longer be permitted as an authorized substance for use in organic livestock production, due to the availability of organic milk and the requirements in the regulations that require the feeding of organic agricultural feed to organically produced livestock. Therefore, the Secretary accepts the NOSB's recommendation and proposes not to renew the exemption for the use of nonorganic milk replacers in § 205.603(c) of the National List.

**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 Groups(s))"**

**Colors-nonsynthetic sources only.**

The NOSB voted not to renew the exemption to permit the use of nonsynthetic colors in organic handling. In considering whether to renew the exemption of nonsynthetic colors, many concerns were raised for the NOSB. First, the NOSB reflected on the fact that the OFPA states that the National List, established by the Secretary, shall be based upon a proposed National List or proposed amendments to the National List developed by the NOSB. In relation to that provision of the OFPA, the NOSB was made aware that nonsynthetic colors never received a formal recommendation by the NOSB to be included on the National List. Nonsynthetic colors were erroneously included in the final rule. As a result, the NOSB received several comments to remove the category of nonsynthetic colors from the National List, as nonsynthetic colors should be evaluated by the NOSB through the petition process.

Secondly, the NOSB took comments into account that raised concern about how the broad category of "nonsynthetic colors" produces

difficulty in determining and verifying what colors are truly nonsynthetic versus synthetic and how such ambiguity could give rise to the use of inappropriate substances in organically handled products.

In addition, the NOSB also deliberated on the historical fact that nonsynthetic colors had been permitted for use by the organic industry for over five years. As a result, commenters raised a general concern that removing nonsynthetic colors from the National List could cause a disruption in the manufacture of organic products in the organic handling sector.

Taking all of these concerns into consideration, the NOSB decided that it would not affirm or deny the re-authorization of nonsynthetic colors on the National List at its April 2006 meeting. Instead, the NOSB decided that it would provide the industry a window of opportunity to petition the addition of nonsynthetic colors on the National List before the finalization of the Sunset Review process. As of the October 2006 meeting, nine individual and groups of colors had been petitioned for consideration as nonsynthetic on § 205.605(a), and as agricultural, but not commercially available as organic, on § 205.606, of the National List. In addition, the NOSB considered that in the absence of an initial recommendation from the NOSB to permit the addition of nonsynthetic colors as a broad category that they could not continue to permit the exemption of nonsynthetic colors on § 205.605(a). As a result, the NOSB voted not to renew the exemption of nonsynthetic colors on § 205.605(a) and that they not be permitted for use in organic handling. Therefore, the Secretary accepts the NOSB's recommendation and proposes not to renew the exemption for the use of colors, nonsynthetic on § 205.605(a) of the National List.

Potassium tartrate made from tartaric acid.

The NOSB recommended to remove "Potassium tartrate made from tartaric acid" from § 205.605(b) of the National List. The NOP regulations, at § 205.605(b), authorize the use of Potassium tartrate made from tartaric acid in organic handling. Comments were submitted concerning the continued need for this authorization. Based on information received through public comment, the NOSB learned that Potassium tartrate made from tartaric acid is not a term/substance formally recognized or authorized by the Food and Drug Administration (FDA) in food processing and is improperly identified on the National List. Comments

suggested that the authorization for Potassium tartrate made from tartaric acid be removed from the National List and be properly referenced as "Potassium acid tartrate," (21 CFR 184.1077), which is already an exempted substance on the National List.

Research demonstrates that the original intent of the NOSB, in 1995, was to authorize the use of "Potassium tartrate" (also known as Potassium acid tartrate) in organic handling; however, when the NOSB made its recommendation to the Secretary, its recommendation included language suggesting the Secretary authorize the use of "Potassium acid tartrate (or potassium tartrate made from tartaric acid)" on the National List for organic handling. As a result of the NOSB recommendation, the NOP, when finalizing the National List in December 2000, included both references of the substance (Potassium acid tartrate and Potassium tartrate made from tartaric acid) on the National List and created a situation of unnecessary duplication, as the terms were meant to be synonymous. Therefore, the inclusion of the term "Potassium tartrate made from tartaric acid" was included in technical error, considering the fact that the FDA regulations do not authorize its use, but, instead, authorize the use of "potassium acid tartrate".

Accordingly, in response to the NOSB's recommendation to remove "Potassium tartrate made from tartaric acid" from the National List at § 205.605(b), the Secretary accepts the NOSB's recommendation and proposes not to renew the exemption.

### III. Related Documents

One advanced notice of proposed rulemaking with request for comments was published in **Federal Register** Notice 70 FR 35177, June 17, 2005, to make the public aware that the allowance of 169 synthetic and non-synthetic substances in organic production and handling will expire, if not reviewed by the NOSB and renewed by the Secretary.

### 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 authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish 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. The National List petition process is implemented under § 205.607 of the NOP regulations. The current petition process (65 FR 43259, July 13, 2000) can be accessed through the NOP Web site at <http://www.ams.usda.gov/nop>.

#### A. Executive Order 12866

This action has been determined 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 proposed 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 proposed 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 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 proposed rule would not be significant. The effect of this proposed rule would be to allow the continued use of most substances currently listed for use in organic agricultural production and handling. The AMS concludes that this action would have minimal economic impact on 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 proposed 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.

The 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 were projected to reach \$14.5 billion in 2005; total U.S. organic sales, including nonfood uses, were 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 95 certifying agents 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 proposed 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 regulations at 5 CFR part 1320.

The AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of

submitting information or transacting business electronically to the maximum extent possible.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### *E. General Notice of Public Rulemaking*

This proposed rule reflects recommendations submitted to the Secretary by the NOSB for the continuation of 166 exemptions and prohibitions contained on the National List of Allowed and Prohibited Substances. This proposed rule also reflects recommendations by the NOSB to discontinue 3 exemptions contained on the National List. A 60-day period for interested persons to comment on this rule is provided.

#### **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 proposed to be 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 205.603 is revised to read as follows:

#### **§ 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) Biologics—Vaccines.
  - (4) Chlorhexidine—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) 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.
- (6) Electrolytes—without antibiotics.
- (7) Glucose.
- (8) Glycerine—Allowed as a livestock teat dip, must be produced through the hydrolysis of fats or oils.
- (9) Hydrogen peroxide.
- (10) Iodine.
- (11) Magnesium sulfate.
- (12) Oxytocin—use in postparturition therapeutic applications.

(13) Paraciticides. 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 for breeding stock.

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

- (b) As topical treatment, external parasiticide or local anesthetic as applicable. (1) Copper sulfate.
- (2) Iodine.
- (3) 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.
- (4) Lime, hydrated—as an external pest control, not permitted to cauterize physical alterations or deodorize animal wastes.

(5) Mineral oil—for topical use and as a lubricant.

(6) 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.

- (c) As feed supplements. None.
- (d) As feed additives.
  - (1) DL-Methionine, DL-Methionine-hydroxy analog, and DL-Methionine-hydroxy analog calcium—for use only in organic poultry production until October 21, 2008.
  - (2) Trace minerals, used for enrichment or fortification when FDA approved.
  - (3) 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.

(1) EPA List 4—Inerts of Minimal Concern.

(2) [Reserved]

(f) through (z) [Reserved]

#### **§ 205.605 [Amended]**

3. In § 205.605, the substance “colors, nonsynthetic sources only” is removed from paragraph (a) and the substance “Potassium tartrate made from tartaric acid” is removed from paragraph (b).

Dated: February 28, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–3829 Filed 3–5–07; 8:45 am]

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. FAA–2007–27359; Directorate Identifier 2006–NM–042–AD]

RIN 2120–AA64

#### **Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. This proposed AD would require repetitive high frequency eddy current inspections for cracks of the fuselage skin at stringer 5 left and right between stations 340 and 350, and corrective actions if necessary. This proposed AD results from reports of fatigue cracks in the fuselage skin near stringer 5 between stations 340 and 350. We are proposing this AD to detect and correct fatigue cracking of the fuselage skin near stringer 5. Cracks in this area could join together and result in in-flight depressurization of the airplane.

**DATES:** We must receive comments on this proposed AD by April 20, 2007.