

# 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-07-0124; TM-07-12]

RIN 0581-AC76

#### National Organic Program (NOP); Sunset Review (2008)

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

**ACTION:** Advance notice of proposed rulemaking with request for comments.

**SUMMARY:** Sunset of the exempted or prohibited use of substances under the National Organic Program (NOP) is required by the Organic Foods Production Act of 1990 (OFPA). This ANPR announces the sunset of 11 exempted substances and 1 prohibited substance added to the National List on November 3 and 4, 2003. This ANPR establishes November 3, 2008, as the date by which the sunset review and renewal process must be concluded. This advance notice of proposed rulemaking (ANPR) also begins the public comment process on whether the identified existing exemptions or prohibitions should be continued. Finally, this ANPR discusses how the NOP will manage the sunset review and renewal process.

**DATES:** Comments must be submitted on or before January 28, 2008.

**ADDRESSES:** Interested persons may submit written comments on this ANPR using the following addresses:

- Mail: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA-AMS-TMP-NOP, 1400 Independence Avenue., SW., Room 4008-So., Ag Stop 0268, Washington, DC 20250.

- Internet: [www.regulations.gov](http://www.regulations.gov).

Written comments responding to this ANPR should be identified with the docket number AMS-TM-07-0124. You should clearly indicate your position to continue the allowance or prohibition of

the substances identified in this ANPR and the reasons for your position. You should include relevant information and data to support your position (e.g., scientific, environmental, manufacturing, industry impact information, etc.). You should also supply information on alternative substances or alternative management practices, where applicable, that support a change from the current exemption or prohibition of the substance. Only the supporting material relevant to your position will be considered.

It is our intention to have all comments concerning this ANPR, including, names and addresses when provided, whether submitted by mail or internet available for viewing on the Regulations.gov ([www.regulations.gov](http://www.regulations.gov)) internet site. Comments submitted in response to this ANPR will also be available for viewing in person at USDA-AMS, Transportation and Marketing Programs, National Organic Program, 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 ANPR are requested to make an appointment in advance by calling (202) 720-3252.

**FOR FURTHER INFORMATION CONTACT:** Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TM/NOP, Room 4008-So., Ag Stop 0268, 1400 Independence Ave., SW., Washington, DC 20250. Phone: (202) 720-3252. Telephone: (202) 720-3252. E-mail: [Robert.pooler@usda.gov](mailto:Robert.pooler@usda.gov).

**SUPPLEMENTARY INFORMATION:** 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.

#### Background

The OFPA, 7 U.S.C. 6501 *et seq.*, authorizes the establishment of the National List of exempted 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 National Organic Standards Board (NOSB). The Secretary of Agriculture has authority under the OFPA to renew such exemptions and prohibitions. If they are not reviewed by the NOSB and renewed by the Secretary within 5 years of their inclusion on the National List, their authorized use or prohibition expires. This means that synthetic substances Copper sulfate, Ozone gas, Peracetic acid, and EPA List 3 Inerts, currently allowed for use in organic crop production, will no longer be allowed for use after November 3, 2008. Calcium chloride currently prohibited from use in organic crop production, except as a foliar spray to treat a physiological disorder associated with calcium uptake, will be allowed after November 3, 2008. This also means that Agar-agar, Carageenan, and Tartaric acid, currently allowed for use in organic handling, will be prohibited after November 3, 2008. Finally, Animal enzymes, Calcium sulfate, Glucono delta lactone, and Cellulose, currently allowed for use in organic handling, will no longer be allowed for use after November 4, 2008.

Expiration of the exempted or prohibited use of substances is provided for under the OFPA's sunset provision. This ANPR announces the sunset of 11 exempted substances and 1 prohibited substance added to the National List on November 3 and 4, 2003. This ANPR establishes November 3, 2008, as the date by which the sunset review and renewal process must be concluded. Substances not renewed will be removed from the National List. This ANPR also begins the public comment process on whether the existing specific exemptions or prohibitions on the National List should be continued. This ANPR discusses how the NOP will manage the sunset review and renewal process.

Because these substances may be critical to the production and handling of a wide array of raw and processed organic agricultural products, their expiration could cause disruption of well-established and accepted organic production, handling, and processing systems. Therefore, the NOP is initiating

the sunset review and renewal process now, in order to provide ample opportunity for you to make your views known.

Initially, Tartaric acid was inadvertently included in the 2007 sunset process (70 FR 35177, June 17, 2005) and recommended for renewal by the NOSB (November 17, 2005). However, because Tartaric acid was not scheduled to sunset until October 31, 2008, it was not included in the 2007 sunset proposed rule (72 FR 9872, March 6, 2007). Consequently, Tartaric acid will receive consideration under this sunset review and the NOSB will consider comments previously submitted in response to the 2007 sunset ANPR.

DL-Methionine, DL-Methionine-hydroxyl analog, and DL-Methionine-hydroxyl analog calcium (CAS #—59—51—8; 63—68—3; 348—67—4) were added to the National List on November 3, 2003, for use in organic poultry production. Initially these substances carried an expiration date of October 21, 2005. Effective October 22, 2005, the expiration date was amended to October 1, 2008. Because these substances have an expiration date recommended by the NOSB and established by rulemaking, they are not included in this sunset review. The NOP National List petition process would have to be employed for these substances to be authorized for use after October 1, 2008.

### The Sunset Process

As the first step in this process, we invite public comment on the specific exemptions or prohibitions currently on the National List that are described in this document. All substances currently on the National List have been previously evaluated and determined by the NOSB for consistency with OFPA and its implementing regulations. According to § 6517(e) of the OFPA, these substances must be reviewed by the NOSB and renewed by the Secretary for their use or prohibition to continue after 5 years of their addition to the National List which will be November 3, 2008. Public comments submitted will be considered in the review and renewal process.

The NOP will forward comments received under this ANPR to the NOSB for review. The NOSB will review the exemptions and prohibitions of the substances designated to sunset, including the public comments received

during this review. The NOSB will review each of the substances listed in this ANPR and may determine that certain substances warrant a more in-depth review and require additional information or research that considers new scientific data and technological and market advances.

Following the NOSB's review, the NOSB will make a recommendation to the Secretary about the continuation of specific exemptions and prohibitions for the substances listed in this ANPR. After the Secretary receives the NOSB's recommendations, the NOP will publish a proposed rule based on the NOSB recommendations. This proposed rule will provide an additional opportunity for you to express your views. Comments received on the proposed rule will be used to develop a final rule. Because the sunset review and renewal process involves rulemaking, the NOP believes it is appropriate to initiate the process now with a thirty-day comment period.

### Guidance on Submitting Your Comments

#### *Comments That Support Existing Exemptions or Prohibitions*

If you provide comments that support the renewal of any or all existing exemptions or prohibitions included within this ANPR, you should clearly indicate this and provide your reasons and any relevant documentation that supports your position.

#### *Comments That Do Not Support Continuing an Existing Exemption*

If you provide comments that do not support continuing an existing exemption, you should provide reasons why the use of the substance should no longer be allowed in organic agricultural production and handling. The current exemptions were originally recommended by the NOSB based on evidence available to the NOSB at the time of review which demonstrated that the substances were found to be: (1) Not harmful to human health or the environment, (2) necessary because of the unavailability of wholly nonsynthetic alternatives, and (3) consistent and compatible with organic practices. Therefore, comments against the continued exemption of a substance should demonstrate how the current substance is: (1) Harmful to human health or the environment, (2) not

necessary to the production of the agricultural products because of the availability of wholly nonsynthetic substitute products, or (3) inconsistent with organic farming and handling.

An Appendix to this ANPR contains worksheets to assist you in gathering relevant information concerning these issues. These worksheets are not required to submit a comment. These worksheets are used by the NOSB to develop their recommendations to the Secretary to include an exempted or prohibited substance on the National List. You do not have to answer the questions on the worksheets; they are intended only to help you provide substantive comments to the NOSB when you provide comments on the specific substance.

In addition, comments that do not support the continued use of a substance(s) listed within this ANPR should also provide evidence concerning viable alternatives for the substance you believe should be discontinued. Viable alternatives include, but are not limited to: alternative management practices that would eliminate the need for the specific substance; other currently exempted substances that are on the National List which could eliminate the need for this specific substance; and other organic or nonorganic agricultural substances. Such evidence also should adequately demonstrate that the alternative has a function and effect that equals or surpasses the specific exempted substance that you do not want to be continued. Assertions about an alternative substance except for those alternatives that already appear on the National List should, if possible include the name and address of the manufacturer of the alternative. Further, your comments should include a copy or the specific source of any supportive literature, which could include product or practice descriptions; performance and test data; reference standards; name and address of producers who have used the alternative under similar conditions and the date of use; and an itemized comparison of the function and effect of the proposed alternative(s) with substance under review. The chart below can help you describe recommended alternatives for different types of organic operations in place of a current exempted substance that you do not want to be continued.

If the currently listed substance is used in...	And is a (an). . .	Then the recommended alternative should be a (an). . .
Crop or Livestock Production .....	Synthetic substance .....	—Another currently listed synthetic substance; —Nonsynthetic substance; or —Management practice.
Crop or Livestock Production .....	Synthetic inert substance (pesticidal).	—Another currently listed synthetic substance or; —Nonsynthetic substance.
Handling .....	Synthetic substance .....	—Another currently listed synthetic substance; —Nonsynthetic (non-ag) substance; or —Management practice.
Handling .....	Nonsynthetic (non-ag) substance ..	—Agricultural substance; or —Management practice.
Handling .....	Nonorganic agricultural product ....	—Organic agricultural product.

The NOP understands that supportive technical or scientific information for synthetic alternatives not currently on the National List may not be easily available to organic producers and handlers. Such information may, however, be available from the research community including universities, or other sources, including international organic programs.

*Comments That Do Not Support Continuing an Existing Prohibition*

If you provide comments against continuation of the prohibition on the use of Calcium chloride, you should specify how Calcium chloride is now consistent with the criteria in the OFPA and the NOP regulation. When this prohibition was originally recommended by the NOSB, it was accepted because the evidence available to the NOSB at the time of review demonstrated that the substance, except as annotated, was found to be harmful to human health or the environment and was inconsistent and not compatible with organic practices. Therefore, any comments against continuation of the prohibition on the use of Calcium chloride should provide new information, including a copy of the specific source of any supportive literatures showing that Calcium chloride is no longer harmful to human health or the environment and is consistent and compatible with organic practices.

An Appendix to this ANPR contains worksheets to assist you in gathering relevant information concerning these issues. These worksheets are not required for you to submit a comment. These worksheets are used by the NOSB to develop their recommendations to the Secretary to include an exempted or prohibited substance on the National List. You do not have to answer the questions on the worksheets; they are intended to help you provide substantive comments to the NOSB when you provide comments on the specific substance.

**Request for Comments**

The NOP requests that you comment whether the NOSB should continue to recommend the following exemptions and prohibition on the National List of Allowed and Prohibited Substances for organic agricultural production and handling:

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

(a) As algicide, disinfectants, and sanitizer, including irrigation system cleaning systems.

(3) Copper sulfate—for use as an algicide in aquatic rice systems, is limited to one application per field during any 24-month period. Application rates are limited to those which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.

(5) Ozone gas—for use as an irrigation system cleaner only.

(6) Peracetic acid—for use in disinfecting equipment, seed, and asexually propagated planting material.

(e) As insecticides (including acaricides or mite control).

(3) Copper Sulfate—for use as tadpole shrimp control in aquatic rice production, is limited to one application per field during any 24-month period. Application rates are limited to levels which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.

(i) As plant disease control.

(7) Peracetic acid—for use to control fire blight bacteria.

(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.

(2) EPA List 3—Inerts of unknown toxicity allowed:

(ii) Inerts used in passive pheromone dispensers.

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

(c) Calcium chloride, brine process is natural and prohibited for use except as a foliar spray to treat a physiological disorder associated with calcium uptake.

*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:*

Agar-agar.  
Animal enzymes—(Rennet—animals derived; Catalase—bovine liver; Animal lipase; Pancreatin; Pepsin; and Trypsin).  
Calcium sulfate—mined.

Carageenan.  
Glucono delta-lactone—production by the oxidation of D-glucose with bromine water is prohibited.

Tartaric acid

(b) *Synthetics allowed:*

Cellulose—for use in regenerative casings, as an anti-caking agent (non-chlorine bleached) and filtering aid.

Tartaric acid  
All comments will be considered in the development of the NOSB’s recommendations to the Secretary.

**Authority:** 7 U.S.C. 6501 *et seq.* and 7 CFR part 205.

Dated: December 21, 2007.

**Lloyd C. Day,**  
*Administrator, Agricultural Marketing Service.*

**Appendix**

This Appendix contains worksheets to assist you in gathering relevant information concerning the compatibility of substances with evaluation criteria of the OFPA. These worksheets are not required to submit a comment. These worksheets are used by the NOSB to develop their recommendations to the Secretary to include an exempted or

prohibited substance on the National List.  
You do not have to answer the questions on

the worksheets; they are intended only to  
help you provide substantive comments to

the NOSB when you provide comments on  
the specific substance.

### EVALUATION CRITERIA FOR SUBSTANCES ADDED TO THE NATIONAL LIST

Question	Yes	No	N/A <sup>1</sup>	Documentation (TAP; petition; regulatory agency; other)
<b>Category 1. Adverse impacts on humans or the environment?</b>				
1. Is there environmental contamination during manufacture, use, misuse, or disposal? [§ 6518 m.3] 2. Is the substance harmful to the environment? [§ 6517c(1)(A)(i);6517(c)(2)(A)] 3. Does the substance contain List 1, 2, or 3 inerts? [§ 6517 c (1)(B)(ii)] 4. Is there potential for detrimental chemical interaction with other materials used? [§ 6518 m.1] 5. Are there adverse biological and chemical interactions in agro-ecosystem? [§ 6518 m.5] 6. Are there detrimental physiological effects on soil organisms, crops, or livestock? [§ 6518 m.5] 7. Is there a toxic or other adverse action of the material or its breakdown products? [§ 6518 m.2] 8. Is there undesirable persistence or concentration of the material or breakdown products in environment?[§ 6518 m.2] 9. Is there any harmful effect on human health? [§ 6517 c (1)(A)(i) ; 6517 c(2)(A)i; § 6518 m.4]				
<b>Category 2. Is the Substance Essential for Organic Production?</b>				
1. Is the substance formulated or manufactured by a chemical process? [6502 (21)] 2. Is the substance formulated or manufactured by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral, sources? [6502 (21)] 3. Is the substance created by naturally occurring biological processes? [6502 (21)] 4. Is there a wholly natural substitute product? [§ 6517 c (1)(A)(ii)] 5. Is the substance used in handling, not synthetic, but not organically produced? [§ 6517 c (1)(B)(iii)] 6. Is there any alternative substances? [§ 6518 m.6] 7. Is there another practice that would make the substance unnecessary? [§ 6518 m.6]				
<b>Category 3. Is the substance compatible with organic production practices?</b>				
1. Is the substance consistent with organic farming and handling? [§ 6517 c (1)(A)(iii); 6517 c (2)(A)(ii)] 2. Is the substance compatible with a system of sustainable agriculture? [§ 6518 m.7] 3. Is the substance used in production, and does it contain an active synthetic ingredient in the following categories: a. copper and sulfur compounds; b. toxins derived from bacteria; c. pheromones, soaps, horticultural oils, fish emulsions, treated seed, vitamins and minerals? d. livestock parasiticides and medicines? e. production aids including netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleaners?				

<sup>1</sup> If the substance under review is for crops or livestock production, all of the questions from 205.600 (b) are N/A—not applicable.

[FR Doc. E7-25270 Filed 12-27-07; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 981

[Docket No. AO-214-A7; AMS-FV-07-0050; FV07-981-1]

#### Almonds Grown in California; Recommended Decision on Proposed Amendment of Marketing Order No. 981

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

**ACTION:** Proposed rule and opportunity to file exceptions.

**SUMMARY:** This is a recommended decision regarding proposed amendments to Marketing Order No. 981 (order), which regulates the handling of almonds grown in California. Two amendments were proposed by the Almond Board of California (Board), which is responsible for local administration of the order. These proposed amendments would: authorize the establishment of specific outgoing quality requirements for different markets; and authorize the establishment of container marking and labeling requirements. The proposals are intended to provide additional flexibility in administering the quality control provisions of the order and provide the industry with additional tools to aid in the marketing of almonds. This recommended decision invites written exceptions on the proposed amendments.

**DATES:** Written exceptions must be filed by January 17, 2008.

**ADDRESSES:** Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1081-S, Washington, DC 20250-9200, Fax: (202) 720-9776 or via the Internet at <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102-B, Fresno, California 93721; Telephone: (559) 487-5110, Fax: (559) 487-5906, or E-mail:

[Martin.Engeler@usda.gov](mailto:Martin.Engeler@usda.gov); or Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-1509, Fax: (202) 720-8938, or E-mail: [Laurel.May@usda.gov](mailto:Laurel.May@usda.gov).

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding; Notice of Hearing issued on June 29, 2007, and published in the July 6, 2007, issue of the **Federal Register** (72 FR 36900).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

#### Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendments to Marketing Order 981 regulating the handling of almonds grown in California, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Martin Engeler, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The proposed amendments are based on the record of a public hearing held August 2, 2007, in Modesto, California. Notice of this hearing was published in the **Federal Register** on July 6, 2007 (72 FR 36900). The notice of hearing contained the two proposals submitted by the Board.

The proposed amendments were recommended by the Board following deliberations at public meetings on November 28, 2006, and February 27, 2007, and were submitted to the Agricultural Marketing Service (AMS) on March 12, 2007. After reviewing the recommendation and other information submitted by the Board, AMS determined to proceed with the formal rulemaking process and schedule the matter for hearing.

The Board's proposed amendments to the order would: (1) Authorize the establishment of different outgoing almond quality requirements for different markets; and (2) authorize the establishment of container marking and labeling requirements.

USDA also proposed to make such changes to the order as may be necessary, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments.

Eleven industry witnesses testified at the hearing. These witnesses represented almond producers and handlers in the production area, as well as Board staff, and all were supportive of the proposed amendments. The witnesses emphasized the need to equip the industry with updated and more comprehensive tools for the marketing of California almonds, and testified that the two proposed amendments would assist in this matter.

Witnesses offered testimony in support of the Board's recommendation to add authority for different outgoing quality requirements for shipments to different markets. Under that authority, the Board could recommend the establishment of outgoing quality requirements to meet the specifications of particular markets. According to testimony, this would assure delivery of a consistent quality product, which would help maintain customer confidence and market share.

Witnesses also supported the recommendation to add general authority for container marking and labeling requirements. If implemented, this authority would enable the Board to recommend the establishment of container marking and labeling regulations to aid in the orderly marketing of almonds. Such container marking or labeling could include information about the product's origin, product handling instructions, or other information responsive to market demands.

At the conclusion of the hearing, the Administrative Law Judge established a deadline of September 24, 2007, for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. The filing deadline was extended to September 26, 2007. Two briefs were filed during that period: one brief summarized witness testimony from the hearing and supported adoption of the proposed order amendments; and the second brief provided a brief history of the California almond industry, clarified the intent of the Board's proposed amendment regarding container