

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 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 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 2005, the number of U.S. certified organic crop, livestock, and handling operations totaled about 8,500. Based on 2005 USDA, Economic Research Service, data from USDA-accredited certifying agents, U.S. certified organic acreage increased to 4 million acres.

The U.S. sales of organic food and beverages have grown from \$1 billion in 1990 to nearly \$17 billion in 2006. The organic industry is viewed as the fastest growing sector of agriculture, representing almost 3 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, including a 22 percent increase in 2006.

In addition, USDA has 95 accredited certifying agents who 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 11 exemptions and 1 prohibition contained on the National List of Allowed and Prohibited Substances. A 30-day period for interested persons to comment on this rule is provided. Thirty days is deemed appropriate because the expiration of these 12 substances has been widely publicized, their continued use or prohibition is critical to organic production, and this rulemaking should be completed before November 3, 2008.

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.

§ 205.605 [Amended]

2. Section 205.605(a) is amended by removing “Carageenan” and adding “Carrageenan” in its place, and by removing “Tartaric acid” and adding “Tartaric acid—made from grape wine” in its place.

3. Section 205.605(b) is amended by removing “Tartaric acid” and adding “Tartaric acid—made from malic acid” in its place.

Dated: July 1, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–15389 Filed 7–11–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 205

[Docket Number AMS–TM–08–0025; TM–08–05PR]

RIN 0581–AC81

National Organic Program; Proposed Amendment to the National List of Allowed and Prohibited Substances (Livestock)

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) to reflect one recommendation submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on May 22, 2008. Consistent with the recommendation from the NOSB, this proposed rule would revise the annotation of one substance on the National List, Methionine, to extend its use in organic poultry production until October 1, 2010.

DATES: Comments must be received by August 13, 2008.

ADDRESSES: Interested persons may submit written comments on this proposed rule using the following addresses:

- *Mail:* 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.*

Written comments responding to this proposed rule should be identified with the docket number AMS—TM—08—0025. You should clearly indicate your position on the proposed continued allowance for the use of methionine in poultry production until October 1, 2010. You should clearly indicate 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.). Finally, you should also supply information on alternative substances or alternative management practices, where applicable, that support a change from the current exemption for methionine. Only the supporting material relevant to your position will be considered.

It is our intention to have all comments concerning this proposed rule, including, names and addresses when provided, whether submitted by mail or internet available for viewing on the Regulations.gov (www.regulations.gov) Internet site. Comments submitted in response to this proposed rule 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 proposed rule are requested to make an appointment in advance by calling (202) 720—3252.

FOR FURTHER INFORMATION CONTACT: Richard H. Mathews, Chief, Standards Development and Review Branch, 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. This National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990 (OFPA), as amended, (7 U.S.C.

6501 *et seq.*), and NOP regulations, in § 205.105, specifically prohibit the use of any synthetic substance for organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling be on the National List.

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 nine times, October 31, 2003 (68 FR 61987), November 3, 2003 (68 FR 62215), October 21, 2005 (70 FR 61217), June 7, 2006 (71 FR 32803), September 11, 2006 (71 FR 53299), June 27, 2007 (72 FR 35137), October 16, 2007 (72 FR 58469), December 10, 2007 (72 FR 69569), and December 12, 2007 (72 FR 70479).

This proposed rule would amend the National List to reflect one recommendation submitted to the Secretary by the NOSB on May 22, 2008. Based on their evaluation of a petition submitted by industry participants, the NOSB recommended that the Secretary amend § 205.603(d)(1) of the National List by revising the annotation of Methionine, a feed additive, to extend its use in organic poultry production until October 1, 2010. The use of Methionine in organic production was evaluated by the NOSB using the evaluation criteria specified in OFPA (7 U.S.C. 6517—6518).

II. Overview of Proposed Amendment

The following provides an overview of the proposed amendment to § 205.603 of the National List:

Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

This proposed rule would amend § 205.603(d)(1) by changing “2008” to “2010”. Section 205.603(d)(1) would now read as follows:

DL—Methionine, DL—Methionine-hydroxyl analog, and DL—Methionine-hydroxyl analog calcium (CAS #—59—51—8; 63—68—3; 348—67—4)—for use only in organic poultry production until October 1, 2010.

Methionine was petitioned for its continued use as a synthetic feed additive in organic poultry operations. Methionine is a colorless or white crystalline powder that is soluble in water. It is classified as an amino acid and considered to be an essential amino acid that is regulated as an animal feed

nutritional supplement by the Food and Drug Administration (21 CFR 582.5475).

Methionine was originally included on the National List on October 31, 2003, with an early expiration date of October 21, 2005, (the normal time period for the use of a substance contained in the National List is five years, beginning with the date the substance appears on the National List regulations). Methionine was petitioned by organic livestock producers as a part of the NOSB’s 1995 initial review of synthetic amino acids considered for use in organic livestock production. The petitioners asserted that Methionine was a necessary dietary supplement for organic poultry, due to an inadequate supply of organic feeds containing sufficient concentrations of naturally-occurring Methionine. Petitioners suggested synthetic Methionine would be fed as a dietary supplement to organic poultry at levels ranging from 0.3 to 0.5 percent of the animal’s total diet. The petitioners also asserted that a prohibition on the use of synthetic Methionine would contribute to nutritional deficiencies in organic poultry thereby jeopardizing the animal’s health. After consideration of the justification provided for the inclusion of Methionine and an assessment under the evaluation criteria provided in OFPA (7 U.S.C. 6517—6518), the NOSB considered the use of synthetic Methionine to be consistent with OFPA and recommended its inclusion onto the National List for use in organic poultry production with an early expiration on its use (October 21, 2005). The NOSB recommended an early expiration on the use of Methionine to encourage the organic poultry industry to phase out the use of synthetic Methionine in poultry diets and develop non-synthetic alternatives to its use as a feed additive.

On January 10, 2005, two organic poultry producers petitioned the NOSB to extend the use of Methionine in organic poultry production beyond October 21, 2005. The petition was filed because the organic poultry industry had been unable to develop suitable non-synthetic alternatives for synthetic Methionine in organic poultry diets. The petition sought additional time for development of non-synthetic alternatives. Preliminary research results on nonsynthetic alternatives to synthetic Methionine was provided to the NOSB. Although considered inconclusive, the preliminary results demonstrated that research trials were underway to identify non-synthetic alternatives for phasing out synthetic Methionine in organic poultry diets.

The NOSB, at its February 28–March 3, 2005, meeting in Washington, DC, received and evaluated public comment on the petition to extend the use of Methionine in organic poultry production beyond October 21, 2005. The NOSB concluded that Methionine is consistent with the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA; however, the NOSB maintained that non-synthetic alternatives must be developed during the additional extension on the use of synthetic Methionine in organic poultry diets. Therefore, the NOSB recommended Methionine be added to the National List for use only in organic poultry production until October 1, 2008, so that the organic poultry industry could continue its research to develop non-synthetic alternatives for the use of synthetic Methionine.

In response to the NOSB recommendation of March 3, 2005, § 205.603(d)(1) of the National List was amended (Friday, October 21, 2005, 70 FR 61217) to allow the use of Methionine in organic poultry production until October 1, 2008.

This proposed rule reflects recommendations submitted to the Secretary by the NOSB, at its May 2008 meeting, for extending the use of Methionine in organic poultry production until October 1, 2010. The NOSB evaluated this substance using criteria in the OFPA.

The substance's evaluation was initiated after receipt, by Agricultural Marketing Service (AMS), of a petition filed in December 2007 by the Methionine Task Force (MTF). The MTF requested that § 205.603(d)(1) be amended by removing the annotation date of "October 8, 2008." They also requested that Methionine, in the future, undergo the standard sunset process for review of materials on the National List. The MTF petition addresses the status of the most viable alternatives to synthetic Methionine and agrees that none of the alternatives are currently commercially available.

Additionally, in response to the December 28, 2007, Advanced Notice of Proposed Rulemaking (ANPR) (72 FR 73667) announcing the 2008 sunset review of 12 substances on the National List, AMS received six comments supporting the relisting of DL—Methionine, DL—Methionine-hydroxyl analog, and DL—Methionine-hydroxyl analog calcium (CAS #—59–51–8; 63–68–3; 348–67–4). Because these substances have an expiration date (October 1, 2008) recommended by the NOSB and established by rulemaking, they were not included in the 2008 sunset review. These comments,

however, have been considered by the NOSB in developing their recommendation and by the AMS in developing this proposed rule.

The NOSB, at its May 20–22, 2008, meeting in Baltimore, Maryland, received and evaluated public comment on the petition to extend the use of Methionine in organic poultry production beyond October 1, 2008. The NOSB also considered comments received, regarding the need for Methionine, at its November 2007 meeting in Washington, DC.

The NOSB has determined that while wholly natural substitute products exist, they are not presently available in sufficient supplies to meet poultry producers needs. Thus, the NOSB concluded that synthetic Methionine remains a necessary component of a nutritionally adequate diet for organic poultry. Loss of the use of Methionine, at this time, would disrupt the well-established organic poultry market and cause substantial economic harm to organic poultry operations. To prevent disruption to the organic poultry market, while the organic feed sector creates sufficient supplies of wholly natural substitute products, the NOSB has recommended extending the allowed use of Methionine in poultry production until October 1, 2010.

AMS has reviewed and concurs with the NOSB's recommendation.

The organic industry, in 2005, raised approximately 13.8 million birds, had organic poultry products sales of \$161 million and organic egg sales of another \$161 million. In addition to being sold as whole products, organic eggs and poultry are sold for use in the production of organic processed products such as eggnog, ice cream, soups, broth, noodles, French toast, pancakes, waffles, tartar sauce, hollandaise sauce, mayonnaise, salad dressing, cookies, cakes, cheese cakes, bread, and other bakery goods. Accordingly, it is not just the organic poultry market that would be adversely impacted should producers lose the use of Methionine at this time. Processors would likely be faced with sourcing conventional eggs and poultry, the use of which would disqualify their products from being labeled "organic." Only organic agricultural ingredients are allowed in products labeled as "organic" unless the agricultural ingredient has been added to the National List and determined commercially unavailable.

III. Related Documents

Since September 2001 three notices have been published announcing meetings of the NOSB and its planned

deliberations on recommendations involving the use of Methionine in organic poultry production. The three notices were published in the **Federal Register** as follows: (1) September 21, 2001 (66 FR 48654), (2) February 11, 2005 (70 FR 7224), and (3) April 4, 2008 (73 FR 18491). Methionine was first proposed for addition to the National List in the **Federal Register** on April 16, 2003 (68 FR 18556). Methionine was added to the National List by final rule in the **Federal Register** on October 31, 2003 (68 FR 61987). A proposal to amend the annotation for Methionine was published in the **Federal Register** on July 29, 2005 (70 FR 43786). The annotation for Methionine was amended by final rule in the **Federal Register** on October 21, 2005 (70 FR 61217).

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 (72 FR 2167, January 18, 2007) can be accessed through the NOP Web site at http://www.ams.usda.gov/nop/Newsroom/FedReg01_18_07NationalList.pdf.

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. The final rule adding Methionine to the National List was reviewed under this Executive Order and no additional related information has been obtained since then. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA 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 the Environmental Protection Agency 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, 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 current approval for the use of Methionine in organic poultry production will expire October 1, 2008. The effect of this proposed rule would be to allow the continued use of Methionine through October 1, 2010. 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.

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 2005, the number of U.S. certified organic crop, livestock, and handling operations totaled about 8,500. Based on 2005 USDA, Economic Research Service, data from USDA-accredited certifying agents, U.S. certified organic acreage increased to 4 million acres.

The U.S. sales of organic food and beverages have grown from \$1 billion in 1990 to nearly \$17 billion in 2006. The organic industry is viewed as the fastest

growing sector of agriculture, representing almost 3 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, including a 22 percent increase in 2006.

In 2005, U.S. retail sales of organic poultry products were \$161 million. The growth rate for organic poultry retail sales is estimated at between 23 and 38 percent per year. Organic egg sales were \$161 million in 2005 and are projected to grow at a rate of 8 to 13 percent per year. The organic industry, in 2005, raised approximately 13.8 million birds. Organic poultry is raised in 40 of the 50 states. In addition to being sold as whole products, organic eggs and poultry are used in the production of organic processed products such as eggnog, ice cream, soups, broth, noodles, French toast, pancakes, waffles, tartar sauce, hollandaise sauce, mayonnaise, salad dressing, cookies, cakes, cheese cakes, bread, and other bakery goods.

In addition, USDA has 95 accredited certifying agents who 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 extending the

use of Methionine, a synthetic substance, in organic poultry production until October 1, 2010. The NOSB evaluated this substance using criteria in the OFPA. The substance's evaluation was initiated by a petition from the MTF.

The NOSB has determined that while wholly natural substitute products exist, they are not presently available in sufficient supplies to meet poultry producer needs. Therefore, synthetic Methionine is presently a necessary component of a nutritionally adequate diet for organic poultry. Thus, loss of the use of Methionine, at this time, would disrupt the well-established organic poultry market and cause substantial economic harm to organic poultry operations. Accordingly, the NOSB has recommended extending the allowed use of synthetic Methionine in poultry production until October 1, 2010.

AMS believes that a 30-day period for interested persons to comment on this rule is appropriate because the continued use of Methionine is critical to organic production, and this rulemaking should be completed before October 1, 2008, to avoid any disruptions to the market place.

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.

§ 205.603 [Amended]

2. Section 205.603(d)(1) is amended by removing “2008” and adding “2010” in its place.

Dated: July 1, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–15390 Filed 7–11–08; 8:45 am]

BILLING CODE 3410–02–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–58107; File No. S7–19–07]

RIN 3235–AJ57

Amendment to Regulation SHO

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; notice of re-opening of comment period.

SUMMARY: The Securities and Exchange Commission is re-opening the comment period on the “Amendments to Regulation SHO” it re-proposed in Securities Exchange Act Release No. 56213 (August 7, 2007), 72 FR 45558 (August 14, 2007), (the “Proposal”). In view of the continuing public interest in the Proposal we believe that it is appropriate to re-open the comment period to provide the public with additional information before we take action on the Proposal.

DATES: Comments should be received on or before August 13, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7–19–07 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–19–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying

information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

James A. Brigagliano, Associate Director, Josephine J. Tao, Assistant Director, Victoria L. Crane, Branch Chief and Christina M. Adams, Staff Attorney, Office of Trading Practices and Processing, Division of Market Regulation, at (202) 551–5720, at the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting additional public comment on proposed amendments to Rules 200 and 203 of Regulation SHO [17 CFR 242.200 and 242.203] under the Securities Exchange Act of 1934 (“Exchange Act”). In the Proposal, the Commission re-proposed amendments to Regulation SHO under the Exchange Act intended to further reduce the number of persistent fails to deliver¹ in certain equity securities by eliminating the options market maker exception to the close-out requirement of Regulation SHO. The Commission also sought comment on two alternatives to elimination that would limit the scope of the options market maker exception. The Commission is re-opening the comment period, which ended on September 13, 2007, to provide additional information with respect to the Proposal to the public.

At the same time that the Commission re-proposed amendments to Regulation SHO to eliminate the options market maker exception to Regulation SHO's close-out requirement, the Commission approved amendments to Regulation SHO to eliminate the rule's “grandfather” provision.² The “grandfather” provision had provided that fails to deliver established prior to a security becoming a threshold security did not have to be closed out in accordance with Regulation SHO's thirteen consecutive settlement day close-out requirement. The amendment to eliminate the “grandfather” exception became effective on October 15, 2007.

¹ A “fail to deliver” occurs when the seller of a security fails to deliver the security by settlement date. Generally, investors must complete or settle their security transactions within three business days. This settlement cycle is known as T+3 (or “trade date plus three days”). T+3 means that when the investor purchases a security, the purchaser's payment generally must be received by its brokerage firm no later than three business days after the trade is executed. When the investor sells a security, the seller generally must deliver its securities, in certificated or electronic form, to its brokerage firm no later than three business days after the sale.

² Securities Exchange Act Release No. 56212 (Aug. 7, 2007), 72 FR 45544 (Aug. 14, 2007).