

# 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-07-0136; TM-07-14]

RIN 0581-AC77

#### National Organic Program, Sunset Review (2011)

**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 12 exempted substances added to the National List on September 12, 2006. This ANPR establishes September 12, 2011, 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 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 *May 13, 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 Ave., 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-07-0136. You should clearly indicate your position on continuing the allowance 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 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:

##### 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 Hydrogen chloride (CAS #7647-01-0) and Ferric phosphate (CAS #10045-86-0), currently allowed for use in organic crop production, will no longer be allowed for use after September 12, 2011. This also means that Egg white lysozyme (CAS #9001-63-2), L-Malic acid (CAS #97-67-6), Microorganisms, Activated charcoal (CAS #s7440-44-0; 64365-11-3), Cyclohexylamine (CAS #108-91-8), Diethylaminoethanol (CAS #100-37-8), Octadecylamine (CAS #124-30-1), Peracetic acid/Peroxyacetic acid (CAS #79-21-0), Sodium acid pyrophosphate (CAS #7758-16-9), and Tetrasodium pyrophosphate (CAS #7722-88-5), currently allowed for use in organic handling, will no longer be allowed for use after September 12, 2011.

Expiration of the exempted or prohibited use of substances is provided for under the OFPA's sunset provision. This ANPR announces the sunset of 12 exempted substances added to the National List on September 12, 2006. This ANPR establishes September 12, 2011, 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 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.

Glycerine oleate (Glycerol monooleate) (CAS #37220-82-9) was also added to the National List on September 12, 2006, but for use only until December 31, 2006. Because

authorized use of this substance expired on December 31, 2006, it is not included in this sunset review.

**The Sunset Process**

As the first step in this process, we invite public comment on the specific exemptions 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 to continue after 5 years of their addition to the National List which will be September 12, 2011. 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 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 for the substances listed in this ANPR. After the Secretary receives the NOSB's recommendations, the NOP will publish a proposed rule enacting 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.

**Guidance on Submitting Your Comments**

*Comments That Support Existing Exemptions*

If you provide comments that support the renewal of any or all existing exemptions 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 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.

**Request for Comments**

The NOP requests that you comment whether the NOSB should continue to recommend the following exemptions 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*

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

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

*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:*

Egg white lysozyme (CAS #9001-63-2).  
L-Malic acid (CAS #97-67-6).  
Microorganisms—any food grade bacteria, fungi, and other microorganism.

(b) *Synthetics allowed:*

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

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

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

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

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

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

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

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: March 10, 2008.

**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? [§ 6518m.3] 2. Is the substance harmful to the environment? [§ 6517c(1)(A)(i); § 6517(c)(2)(A)(i)] 3. Does the substance contain List 1, 2, or 3 inerts? [§ 6517c (1)(B)(ii)] 4. Is there potential for detrimental chemical interaction with other materials used? [§ 6518m.1] 5. Are there adverse biological and chemical interactions in agro-ecosystem? [§ 6518m.5] 6. Are there detrimental physiological effects on soil organisms, crops, or livestock? [§ 6518m.5] 7. Is there a toxic or other adverse action of the material or its breakdown products? [§ 6518m.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? [§ 6517c(1)(A)(i); § 6517c(2)(A)(i); § 6518m.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? [§ 6517c(1)(A)(ii)] 5. Is the substance used in handling, not synthetic, but not organically produced? [§ 6517c(1)(B)(iii)] 6. Is there any alternative substances? [§ 6518m.6] 7. Is there another practice that would make the substance unnecessary? [§ 6518m.6]				
<b>Category 3. Is the substance compatible with organic production practices?</b>				
1. Is the substance consistent with organic farming and handling? [§ 6517c(1)(A)(iii); § 6517c(2)(A)(ii)]				

EVALUATION CRITERIA FOR SUBSTANCES ADDED TO THE NATIONAL LIST—Continued

Question	Yes	No	N/A <sup>1</sup>	Documentation (TAP; petition; regulatory agency; other)
2. Is the substance compatible with a system of sustainable agriculture? [§ 6518m.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. E8-5103 Filed 3-13-08; 8:45 am]  
 BILLING CODE 3410-02-P

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 956**

[Docket No. AMS-FV-07-0157; FV08-956-1 PR]

**Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Increased Assessment Rate**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Walla Walla Sweet Onion Marketing Committee (Committee) for the 2008 and subsequent fiscal periods from \$0.21 to \$0.22 per 50-pound bag or equivalent of Walla Walla sweet onions handled. The Committee locally administers the marketing order which regulates the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. Assessments upon Walla Walla sweet onion handlers are used by the Committee to fund the reasonable and necessary expenses of the program. The fiscal period begins January 1 and ends December 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by May 13, 2008.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs,

AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Barry Broadbent or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: [Barry.Broadbent@usda.gov](mailto:Barry.Broadbent@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation 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, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of Walla Walla sweet onions grown in Southeast Washington and Northeast Oregon, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.”

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice

Reform. Under the marketing order now in effect, Walla Walla sweet onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate, as proposed herein, would be applicable to all assessable Walla Walla sweet onions beginning on January 1, 2008, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2008 and subsequent fiscal periods from \$0.21 to \$0.22 per 50-pound bag or equivalent of Walla Walla sweet onions handled.

The Walla Walla sweet onion marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are