

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 205

[Docket Number AMS-TM-07-0124; TM-07-12FR]

RIN 0581-AC76

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) regulations to enact recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB). The amendments addressed in this final rule pertain to the continued exemption (use) and prohibition of 12 substances in organic production and handling. Consistent with the recommendations from the NOSB, this final rule renews 11 exemptions and 1 prohibition on the National List (along with any restrictive annotations) and corrects the Tartaric acid listings by adding annotations originally recommended to the Secretary.

**DATES: Effective Date:** This final rule becomes effective November 3, 2008.

**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

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 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, Carrageenan, 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.

This final rule reflects recommendations submitted to the Secretary by the NOSB concerning the continued use and prohibition of 12 substances on the National List in organic production and handling. Consistent with the recommendations from the NOSB, this final rule renews 11 exemptions and 1 prohibition on the National List (along with any restrictive annotations) and corrects the Tartaric acid listings by adding annotations originally recommended to the Secretary on November 1, 1995.

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 ten times, October 31, 2003 (68 FR 61987), November 3, 2003

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(68 FR 62215), October 21, 2005 (70 CFR 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), December 12, 2007 (72 FR 70479), and September 18, 2008 (73 FR 54057).

### II. Overview of Amendments

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

#### Renewals

This final rule renews the 11 exemptions and 1 prohibition in 7 CFR 205.601, 205.602, and 205.605 of the following substances in organic agricultural production and handling and amends the USDA's national regulations (7 CFR part 205) to add annotations to the Tartaric acid listings of § 205.605:

#### 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 Group(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—made from grape wine.

(b) *Synthetics allowed:*

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

Tartaric acid—made from malic acid.

**Nonrenewals**

The NOSB determined that the 11 exemptions and 1 prohibition demonstrated a continued need for authorization. Comments received on the proposed rule (73 FR 40194) supported renewal of the 11 exemptions and 1 prohibition. Accordingly there are no nonrenewals.

**Technical Correction**

This final rule amends § 205.605(a) by changing “Carageenan” to “Carrageenan” to correct the spelling of this allowed substance.

**III. Related Documents**

One advanced notice of proposed rulemaking with request for comments was published in **Federal Register** Notice 72 FR 73667, December 28, 2007, to make the public aware that the allowances and prohibition among 12 synthetic and nonsynthetic substances in organic production and handling will expire, if not reviewed by the NOSB and renewed by the Secretary. The proposed rule for this final rule was published on July 14, 2008 (73 FR 40194).

**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/AMSV1.0/getfile?dDocName=STELPRDC5048809&acct=nopgeninfo>.

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

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

**C. Regulatory Flexibility Act**

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

Pursuant to the requirements set forth in the RFA, the Agricultural Marketing Service (AMS) performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). The AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this final rule would not be significant. This action would allow the

continued use of substances currently listed for use in organic agricultural production and handling. The AMS concludes that the economic impact of this final rule, if any, would be minimal and entirely beneficial to small agricultural service firms. Accordingly, USDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

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

The U.S. organic industry at the end of 2001 included nearly 6,949 certified organic crop and livestock operations. These operations reported certified acreage totaling more than 2.09 million acres of organic farm production. Data on the numbers of certified organic handling operations (any operation that transforms raw product into processed products using organic ingredients) were not available at the time of survey in 2001; but they were estimated to be in the thousands. By the end of 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, currently representing nearly 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 accredited 95 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 NOP Web site, at <http://www.ams.usda.gov/nop>. AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

#### D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly, OMB clearance is not

required by section 350(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulation at 5 CFR part 1320.

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. Received Comments on Proposed Rule AMS-TM-07-0124

AMS received 13 comments on proposed rule AMS-TM-07-0124. Twelve of the commenters favored renewing the 11 exemptions and 1 prohibition. The remaining commenter did not refer to subjects within the scope of this rulemaking. Comments were received from consumers, handlers, a certifying agent, trade associations, an organic association, an industry group and ingredient manufacturers. Five comments indicated blanket support for the continued listing of all substances as presented in the proposed rule. Some commenters specifically supported substances that they promote, represent, or rely on. Specific support was received for the following substances (the number in parenthesis represents the number of specific support comments): Agar-agar (2), animal enzymes (1), carrageenan (5), cellulose (3), and tartaric acid (1).

#### Change Made Based on Comment

The following change has been made based upon a comment received.

*Incorrect annotation for Tartaric acid.* One commenter noted that the annotation for the nonsynthetic form of Tartaric acid in the proposed rule was inconsistent with the original November 1, 1995, NOSB recommendation. At the May 2008 meeting, the NOSB recommended that the Tartaric acid listings be corrected to reflect the original annotation which had been inadvertently excluded from the rulemaking. The commenter correctly indicated that the NOSB's original recommendation, "Tartaric acid—made from grape wine," was mistakenly listed as "Tartaric acid—made from organic grape wine" in the proposed rule. We have revised the annotation by

removing the word, "organic" from the listing for the nonsynthetic form of tartaric acid.

#### F. Effective Date

This final rule reflects recommendations submitted to the Secretary by the NOSB for the purpose of fulfilling the requirements of 7 U.S.C. 6517(e) of the OFPA. Section 7 U.S.C. 6517(e) requires the NOSB to review each substance on the National List within 5 years of its publication. The substances being reauthorized for use on the National List were initially authorized for use or prohibition in organic agriculture on November 3, 2003, and November 4, 2003. Because these substances are critical to organic production and handling operations, producers and handlers should be able to continue to use them beyond their 5-year expiration dates of November 3, 2008 and November 4, 2008.

Accordingly, pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule shall be effective on 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 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. In § 205.605, paragraph (a) the word "Carrageenan" is removed and the word "Carageenan" is added in its place, and the words "Tartaric acid" are removed and the words "Tartaric acid—made from grape wine" are added in their place.

■ 3. In § 205.605, paragraph (b) the words "Tartaric acid" are removed and the words "Tartaric acid—made from malic acid" are added in their place.

Dated: October 6, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8-24114 Filed 10-8-08; 8:45 am]

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 204

[Regulation D; Docket No. R-1334]

#### Reserve Requirements of Depository Institutions

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Interim final rule; request for public comment.

**SUMMARY:** Under authority of section 128 of the Emergency Economic Stabilization Act of 2008, the Board is amending Regulation D, Reserve Requirements of Depository Institutions, to direct Federal Reserve Banks to pay interest on balances held at Reserve Banks to satisfy reserve requirements and on balances held in excess of required reserve balances and clearing balances. The Board is also making associated minor changes to its clearing balance policy and the method for recovering float costs.

**DATES:** Effective date: This interim final rule is effective October 9, 2008.

Comments must be received on or before November 21, 2008.

**ADDRESSES:** You may submit comments, identified by Docket No. R-1334, by any of the following methods:

**Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

**Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

**E-mail:**

[regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number in the subject line of the message.

**Fax:** (202) 452-3819 or (202) 452-3102.

**Mail:** Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

#### FOR FURTHER INFORMATION CONTACT:

Sophia H. Allison, Senior Counsel (202/452-3565), Legal Division, or Margaret Gillis DeBoer, Senior Financial Analyst (202/452-3139), Division of Monetary Affairs; for information with respect to the clearing balance policy and float calculations, Jonathan Mueller, Senior Financial Analyst (202/530-6291), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunications Device for the Deaf (TDD) only, contact (202/263-4869); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 128 of the Emergency Economic Stabilization Act of 2008, enacted on October 3, 2008 (the "2008 Act"), accelerated the effective date of the authority for the Federal Reserve Banks to pay earnings on balances maintained at the Reserve Banks by or on behalf of depository institutions. The 2008 Act made this authority effective on October 1, 2008. This authority was originally enacted in Title II of the Financial Services Regulatory Relief Act of 2006 (the "2006 Act") (Pub. L. 109-351, 120 Stat. 1966 (Oct. 13, 2006)), with an original effective date of October 1, 2011. The 2006 Act provides that such earnings must be paid at least once each quarter at a rate not to exceed the general level of short-term interest rates. The 2006 Act also provides that the Board may prescribe regulations concerning the payment of earnings, the distribution of earnings to the depository institutions that maintain balances or on whose behalf balances are maintained, and the responsibilities of correspondents to distribute and credit earnings on balances maintained by the respondent on a pass-through basis with the correspondent.

The Board is publishing this interim final rule amending Regulation D (Reserve Requirements of Depository Institutions) to direct the Federal Reserve Banks to pay interest on balances held at Reserve Banks to satisfy reserve requirements ("required reserve balances") and balances held in excess of required reserve balances and clearing balances ("excess balances"). Reserve Banks will not pay explicit interest on clearing balances (balances that an institution holds to satisfy a contractual clearing balance agreement).

Clearing balances will, however, continue to earn earnings credits under the existing clearing balance policy, although the Board has made minor adjustments to the calculations of earnings credits and float costs to be recovered that are related to reserve requirements. In addition, the Board has eliminated transitional adjustments for reserve requirements in the event of a merger or consolidation.

In the past, the absence of interest payments on required reserve balances acted as a tax on depository institutions' issuance of deposits subject to reserve requirements. To the extent that depository institutions could not satisfy reserve requirements with vault cash, they were required to hold more balances than they otherwise would in a non-interest-bearing account at a Reserve Bank. The absence of interest on excess balances has meant that, when reserve supply significantly exceeds demand, the federal funds rate can fall to as low as zero.

The ability to pay interest on balances held at Reserve Banks should help promote efficiency and stability in the banking sector. Paying interest on excess balances will permit the Federal Reserve to expand its balance sheet as necessary to provide sufficient liquidity to support financial stability while implementing the monetary policy that is appropriate in light of the System's macroeconomic objectives of maximum employment and price stability. Paying interest on excess balances should also help to establish a lower bound on the federal funds rate. Eligible institutions (defined below) will presumably be unwilling to lend balances in the funds market at a rate much below that paid on excess balances maintained at a Reserve Bank. In addition, paying interest on required reserve balances will eliminate much of the reserve tax and lessen the incentive for depository institutions to engage in reserve avoidance behavior, which absorbs real resources and diminishes the efficiency of the banking system.

In light of the current severe strains in financial markets, the amendments to Regulation D will be effective on Thursday, October 9, 2008. Interest will be calculated beginning with the biweekly reserve maintenance period ending October 22, 2008, and the weekly reserve maintenance period ending October 15, 2008. Interest payments will occur within the existing framework for reserve computation and maintenance, which includes reserve averaging, carryover provisions, and reserve deficiency charges. For both excess balances and required reserve balances, interest will be paid on these