

for about 35% of program revenue before their fees were phased out by the 1995 Amendments to the Act. Today, retailers account for 28.6% of all PACA licensees. However, since only new applicants pay a processing fee, retailers contribute little to PACA's annual operating revenue. The fee increase will have no impact on operating costs of retailers and grocery wholesalers. Therefore, retailers and grocery wholesalers will not be unduly burdened by the final rule.

Wholesalers, processors, food service companies, commission merchants, dealers, brokers, and truckers are considered to be dealers and subject to license when they buy or sell more than 2,000 pounds of fresh and/or frozen fruits and vegetables in any given day. This group represents the remaining 10,361 active, "paying" PACA licensees and is the only group impacted by the fee increase.

While the annual revenues of this group of agricultural service firms is unknown, we estimated a significant percentage of these firms have annual receipts less than \$7,000,000. Therefore, the businesses are "small businesses" within the meaning of that term in the RFA. A large number of these small agricultural service firms will be impacted by the PACA license fee increase. While the maximum amount of the PACA license fee is to be \$8,000, this increase will impact a small number of larger firms with multiple branches. Currently, only 56 licensees (or 0.0039%) of all PACA licensees would pay the \$8,000 maximum. The fee structure in the final rule was designed so most firms would only see the annual fee increase from \$550 per year to \$995. This \$445 fee increase is believed to be a minor increase in operating costs to these firms and is more than offset by the protection provided to these firms under the PACA. Larger firms operating at multiple branch locations would face larger fee increases. As the renewal of PACA licenses has become highly automated and renewal notices are sent to all licensees well before the renewal date, elimination of the option biennial or triennial licenses should not impose a substantial burden upon small businesses holding such licenses.

All fruit and vegetable traders that handle less than 2,000 pounds of fresh and/or frozen fruits and vegetables are exempt from the PACA license requirement and would not be subject to this fee increase. These firms would be considered very small and handle a relatively minor volume of total fresh and/or frozen fruits and/or vegetables marketed.

On February 24, 2009 the USDA Fruit and Vegetable Industry Advisory Committee unanimously recommended to the Secretary of Agriculture their approval of the proposed license fee increase.

#### Paperwork Reduction Act

In accordance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements are currently approved under OMB number 0581-0031. The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the PACA as expressed in the order, and the rules and regulations issued under the order.

#### E-Government Act Compliance

AMS is committed to complying with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. License application forms are available on our PACA Web site at <http://www.ams.usda.gov/PACA> and can be printed, completed, and faxed. Currently, forms are transmitted by fax machine and postal delivery. The PACA Branch is working towards furthering the availability of online forms.

#### List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

■ For reasons set forth in the preamble, 7 CFR part 46 is amended as follows:

#### PART 46—[AMENDED]

■ 1. The authority citation for part 46 is revised to read as follows:

**Authority:** 7 U.S.C. 499a–499t.

■ 2. In § 46.6, paragraphs (a) and (b) are revised to read as follows:

#### § 46.6 License fees.

(a) Retailers and grocery wholesalers making an initial application for license shall pay a \$100 administrative processing fee.

(b) For commission merchants, brokers, and dealers (other than grocery wholesalers and retailers) the annual license fee is \$995 plus \$600 for each branch or additional business facility. In no case shall the aggregate annual fees

paid by any such applicant exceed \$8,000.

\* \* \* \* \*

■ 3. In § 46.9, paragraph (k) is revised and paragraph (l) is removed to read as follows:

#### § 46.9 Termination, suspension, revocation, cancellation of licenses; notices; renewal.

\* \* \* \* \*

(k) Only a commission merchant, broker, or dealer holding a multi-year license, prior to phase out of this option, will receive a refund if business operations cease or a change in legal status occurs that requires issuance of a new license prior to the next license renewal date. If a refund is due, it will be issued for any remaining full-year portion of advance fee paid, minus a \$100 processing fee.

Dated: August 17, 2010.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–20978 Filed 8–23–10; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 205

[Document Number AMS–NOP–10–0051; NOP–10–041R]

RIN 0581–AD04

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

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule amends the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) to incorporate a recommendation submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on April 29, 2010. Consistent with the recommendation from the NOSB, this interim rule revises the annotation of one substance on the National List, methionine, to extend its use in organic poultry production until October 1, 2012, at the following maximum levels of synthetic methionine per ton of feed: Laying chickens—4 pounds; broiler chickens—5 pounds; turkeys and all

other poultry—6 pounds. Comments are requested on this interim rule.

On April 29, 2010, the NOSB also recommended to extend the allowance for synthetic methionine beyond October 1, 2012, to October 1, 2015, and decrease the maximum level of synthetic methionine permitted per ton of feed ration to the following levels: 2 pounds for laying and broiler chickens, and 3 pounds for turkeys and all other poultry. The NOSB further recommended that consideration of synthetic methionine after its anticipated October 1, 2015 expiration should take place through the Board's sunset review process rather than through the petition process. The Secretary intends to incorporate the NOSB's recommended reductions in allowable levels in a subsequent rulemaking to address the allowance for synthetic methionine for the period between October 1, 2012, and October 15, 2015.

**DATES:** *Effective Date:* This interim rule becomes effective October 1, 2010. All comments received by October 25, 2010 will be considered prior to the issuance of a final rule. The agency will publish the final rule no later than March 2011.

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

- *Internet:* <http://www.regulations.gov>.

- *Mail:* Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA-AMS-NOP, 1400 Independence Ave., SW., Room 2646-So., Ag Stop 0268, Washington, DC 20250.

Written comments responding to this interim rule should be identified with the docket number AMS-NOP-10-0051; NOP-10-04. You should clearly state whether you support the amendment of the annotation for the continued allowance of synthetic methionine in poultry production until October 1, 2012, at the maximum levels per ton of synthetic methionine in the feed ration, with clearly indicated reason(s) for your position. You should also offer any recommended language changes that would be appropriate for your position. Please include relevant information and data to support your position (*e.g.*, scientific, environmental, manufacturing, industry, impact information, etc.). Only relevant material supporting your position should be submitted.

It is our intention to have all comments concerning this interim rule, including names and addresses when provided, whether submitted by mail or

Internet, available for viewing on the Regulations.gov (<http://www.regulations.gov>) Internet site. Comments submitted in response to this interim rule will also be available for viewing in person at USDA, AMS, National Organic Program, Room 2646-South Building, Stop 0268, 1400 Independence Ave., SW., Washington, DC 20250, 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 interim rule are requested to make an appointment in advance by calling (202) 720-3252.

**FOR FURTHER INFORMATION CONTACT:** Melissa Bailey, Director, Standards Division, National Organic Program, USDA-AMS-NOP, 1400 Independence Ave., SW., Room 2646-So., Ag Stop 0268, Washington, DC 20250-0268. Telephone: (202) 720-3252.

**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. The National List identifies synthetic substances that may be used in organic production and nonsynthetic (natural) substances that may not be used. The National List also identifies nonagricultural nonsynthetic, nonagricultural synthetic, and nonorganic agricultural substances that may be used in organic production and handling.

The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501-6522), and NOP regulations § 205.105 specifically prohibit the use of any synthetic substance for organic production and handling unless provided on the National List. Section 205.105 also requires that any nonorganic agricultural or nonsynthetic nonagricultural substance used in organic handling be on the National List. Under the OFPA, the NOSB reviews exemptions for allowed synthetic substances every 5 years. If the NOSB recommends renewal, then the Secretary has authority under the OFPA to renew such exemptions. 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 expires.

Under the authority of the OFPA, 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 twelve 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); December 12, 2007 (72 FR 70479); September 18, 2008 (73 FR 54057); October 9, 2008 (73 FR 59479); and July 6, 2010 (75 FR 38693). Additionally, a proposed amendment to the National List was published on June 3, 2009 (74 FR 26591).

**II. Overview of Amendment**

This interim rule amends the National List to reflect a recommendation adopted by the NOSB on April 29, 2010, and subsequently forwarded to the Secretary. The NOSB reviewed the use of synthetic methionine in organic poultry production using the evaluation criteria specified in OFPA (7 U.S.C. 6517-6518) and the Secretary has reviewed the NOSB's recommendation.

The current listing of synthetic methionine will expire on October 1, 2010. This rule is issued to ensure the continued use of synthetic methionine after this date and avoid any disruption to the organic poultry market. A final rule will be issued no later than March 2011. The record indicates that the provision of methionine, the use of which is currently allowed, remains an essential dietary component for poultry in organic production and issuance of this interim rule maintains its use.

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

This interim rule amends § 205.603(d)(1) by changing "October 1, 2010" to "October 1, 2012" and imposing maximum levels based on each ton of feed ration. Section 205.603(d)(1) now reads 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, 2012, at the following maximum levels of synthetic methionine per ton of feed: Laying chickens—4 pounds; broiler chickens—5 pounds; turkeys and all other poultry—6 pounds.

Methionine was originally included on the National List on October 31, 2003, with an early expiration date of October 21, 2005 (the normal allowance for a substance added to the National List is five years from the listing date). It is a colorless or white crystalline powder that is soluble in water. Methionine is classified as an essential amino acid because it cannot be biologically produced by poultry and is

necessary to maintain viability. Natural feed sources with high percentages of methionine include bloodmeal, fish meal, crab meal, corn gluten meal, and sunflower seed meal. It is regulated as an animal feed nutritional supplement by the Food and Drug Administration (21 CFR 582.5475). Organic livestock producers had petitioned the substance as a part of the NOSB's initial review of synthetic amino acids. The petitioners asserted that methionine was a necessary dietary supplement for organic poultry and that there was an inadequate supply of allowable organic feeds containing sufficient concentrations of naturally occurring methionine. Petitioners suggested that 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 animals' health. After reviewing a Technical Advisory Panel analysis of the evaluation criteria provided in the OFPA (7 U.S.C. 6517–6518), the NOSB determined that the use of synthetic methionine was consistent with a system of organic production. On October 16, 2001, the NOSB recommended that the Secretary include methionine on the National List of Allowed Synthetics for use in organic poultry production with an early expiration date (October 21, 2005). The NOSB recommended the early expiration date to encourage organic producers to phase out synthetic methionine as a feed additive by identifying and incorporating natural and allowable sources into poultry diets.

On January 10, 2005, two organic poultry producers petitioned the NOSB to extend the use of synthetic methionine in organic poultry production beyond October 21, 2005. The producers stated that they had been unable to develop suitable natural alternatives for synthetic methionine in organic poultry diets. The petitioners requested the extension to provide additional time for the development of these alternatives. The petition included preliminary research results on natural sources of methionine that highlighted the challenge of meeting the maintenance requirements for poultry with allowed organic and natural feed ingredients. Although inconclusive, the preliminary results demonstrated that research trials were underway to identify natural alternatives that could lead to phasing out synthetic

methionine from organic poultry production. At its February 28–March 3, 2005, meeting in Washington, DC, the NOSB received public comment on the petition to extend the use of synthetic methionine in organic poultry production beyond October 21, 2005. While concluding that synthetic methionine was consistent with the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA, the NOSB did not recommend a full five-year allowance for the material. The Board continued to express its strong preference for the development of natural methionine sources for organic poultry production. Therefore, the NOSB recommended that synthetic methionine remain on the National List but only until October 1, 2008. In response to this recommendation, the Secretary amended § 205.603(d)(1) of the National List on October 21, 2005 (70 FR 61217), to allow the use of synthetic methionine in organic poultry production until October 1, 2008.

In December 2007, a coalition of producers identified as the Methionine Task Force (MTF) filed a petition requesting that § 205.603(d)(1) be amended by removing the expiration date of “October 1, 2008.” They also requested that in the future methionine receive the standard sunset review process for materials on the National List. Their petition addressed the status of the most viable alternatives to synthetic methionine and stated that none of the alternatives were yet commercially viable. Additionally, AMS received six comments supporting the re-listing of synthetic methionine in response to the December 28, 2007 (72 FR 73667), Advanced Notice of Proposed Rulemaking announcing the 2008 Sunset Review of 12 substances on the National List. Because methionine was due to expire on October 1, 2008, as established by rulemaking, it was not included among the 12 substances in the 2008 Sunset Review.

The NOSB evaluated public comment on the petition to extend the use of synthetic methionine in organic poultry production beyond October 1, 2008, and also considered comments on the subject from its November 2007 meeting. The NOSB determined that while certain allowable organic and natural sources of methionine existed, they were not available in sufficient supplies to meet poultry producers' needs. Thus, the NOSB concluded that synthetic methionine was a necessary component of a nutritionally adequate diet for organic poultry, and, therefore, essential to organic production. The Board also concluded that terminating the allowance for its use would disrupt

the well-established organic poultry market and cause substantial economic harm to organic poultry producers but did not recommend a full five-year allowance for the material. The NOSB and stakeholders including the MTF agreed that the organic feed sector would continue to research and develop sufficient supplies of allowable organic and natural sources in the interim and thus the NOSB recommended to extend the use of methionine for two more years. The Secretary concurred with the NOSB recommendation to extend the use of synthetic methionine in poultry production until October 1, 2010, and amended the regulation accordingly on September 18, 2008 (73 FR 54057).

The MTF submitted a new petition on July 31, 2009, requesting a five-year extension on the allowance for synthetic methionine. The request proposed to limit the total amount of synthetic methionine to be fed over the life of the bird calculated as the average pounds of the material per ton of feed. The MTF petition proposed these limits at 4 pounds for laying chickens, 5 pounds for broiler chickens and 6 pounds for turkeys and all other poultry per ton of feed. The petitioners stated that these levels of synthetic methionine are the amount necessary to support the animals' basic maintenance requirements and would not provide growth enhancement. In requesting the five-year allowance, the MTF cited research efforts in recent years that have attempted but failed to identify wholly natural and allowable sources of methionine capable of providing poultry's basic maintenance requirement.

The NOSB Livestock Committee reviewed the MTF petition and rejected it. The Livestock Committee stated that averaging the pounds of synthetic methionine fed over the life of the bird would result in the unacceptable outcome of even higher levels being fed at certain stages. The Livestock Committee instead pointed towards future modifications to the livestock feed and living conditions practice standards that would lead to higher levels of natural methionine in poultry feed rations. However, the Livestock Committee agreed with the MTF that wholly natural sources of methionine are not now and would not likely be widely available in the immediate future and that extending the allowance for the synthetic form was warranted.

The Livestock Committee proposed an annotation to the synthetic methionine listing that reflected their reservations about the petitioner's request, but acknowledged that an allowance for the synthetic form would be necessary

throughout the next five years. They proposed to extend the allowance for synthetic methionine in organic poultry production for five years until October 1, 2015, with a step down in the amount allowed after two years. They proposed limits per ton of feed of 4 pounds for laying chickens, 5 pounds for broiler chickens and 6 pounds for turkeys and all other poultry until October 1, 2012, followed by 2 pounds for laying and broiler chickens and 3 pounds for turkeys and all other poultry over the final three years. The Livestock Committee stated that it had consulted with a number of poultry nutritionists and feed mill operators and determined that the rates it proposed were consistent with the industry's best management practices. The Livestock Committee also recommended that the NOSB apply its sunset material review process when considering the allowance for synthetic methionine in anticipation of its proposed October 1, 2015, expiration. The NOSB approved the Livestock Committee's recommendation in its entirety on April 29, 2010.

In the final rule published on December 21, 2000 (65 FR 80570), the NOP recognized the National Research Council's (NRC) Nutrient Requirements of Domestic Animals series as the basis for the livestock feed practice standard. The applicable reference for nutritional sufficiency in poultry production is the NRC's Nutrient Requirements of Poultry, Ninth Revised Edition, published in 1994. The MTF cited this publication in its petition and stated that its proposed allowances for synthetic methionine were approximately half of the NRC recommended levels for maximum growth and production. The MTF also provided data indicating that organically produced grains provide a majority of the methionine requirement in poultry starter feeds but that supplementation with the synthetic form is still necessary to achieve a complete ration. The NOSB fundamentally agreed with this assessment when it accepted with a modest adjustment the limits that the MTF proposed for extending the allowance for synthetic methionine.

The Secretary has reviewed the NOSB's recommendation and concurs that a two-year extension of the allowance for synthetic methionine in organic poultry production until October 1, 2012, is warranted. The Secretary accepts that the maximum limits recommended by the NOSB and as justified by the NOSB for the period October 1, 2010–October 1, 2012, are consistent with the industry's best management practices and would not

result in significant adjustments to comply with this action. Moreover, the signatories to the MTF petition have indicated that the current non-annotated allowance for synthetic methionine has stabilized use at consistent rates.

The Secretary acknowledges the NOSB's intention to lower the allowed levels of synthetic methionine over the five-year period for which the board recommends that the material remain on the National List. The Secretary intends to incorporate the NOSB's recommended reductions in these levels through subsequent rulemaking to address the allowance for synthetic methionine for the period between October 1, 2012, and October 15, 2015. As conveyed at the NOSB meeting and documented in the transcripts, dividing the NOSB's recommendation into separate rulemakings will allow for the continued use of methionine beyond its current expiration while also providing the board with the opportunity to adjust the maximum levels for the 2012–2015 period, if needed.

### III. Related Documents

Since September 2001, four 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 four notices were published in the **Federal Register** as follows: September 21, 2001 (66 FR 48654), February 11, 2005 (70 FR 7224), April 4, 2008 (73 FR 18491), and March 17, 2010 (75 FR 12723).

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), and the annotation was amended by final rule in the **Federal Register** on October 21, 2005 (70 FR 61217). A proposal to amend the annotation once again was published in the **Federal Register** on July 14, 2008 (73 FR 40197), and the annotation was amended by final rule on September 18, 2008 (73 FR 54057).

### IV. Statutory and Regulatory Authority

The OFPA 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 (January 18, 2007, 72 FR 2167) can be accessed through the NOP Web site at [http://www.ams.usda.gov/nop/Newsroom/FedReg01\\_18\\_07NationalList.pdf](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 (68 FR 61987), dated October 31, 2003, adding methionine to the National List was reviewed under this Executive Order and no additional information related to Executive Order 12988 has been obtained since then. This interim 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) be consistent 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 interim rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–695), the Poultry Products Inspections Act (21 U.S.C. 451–472), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), 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. 301–397), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136–1364).

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 persons 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. 601–612) 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). AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this interim rule would not be significant. The current approval for the use of synthetic methionine in organic poultry production will expire October 1, 2010. The effect of this interim rule is to allow the continued use of synthetic methionine through October 1, 2012, at levels that are consistent with current industry

practices. 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, 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 \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

Based on USDA data from the Economic Research Service (ERS), the U.S. organic sector included nearly 13,000 certified organic crop and livestock operations at the end of 2008. These operations contained more than 4.8 million certified acres consisting of 2,665,382 acres of cropland and 2,160,577 acres of pasture and rangeland. The total acreage under organic management represents a twelve percent increase from 2007. Organic poultry production has steadily contributed to the overall growth in the organic food market. ERS estimated that there were 5,538,011 laying chickens and 9,015,984 broiler chickens raised under organic management in 2008. ERS estimated the number of certified organic turkeys raised in the United States in 2008 at 398,531.<sup>1</sup> The Nutrition Business Journal calculated the market value for organic laying chickens at \$252,000,000 in 2008.<sup>2</sup> In addition to being sold as whole products, organic eggs and poultry by-products are used in the production of organic processed products including soups, broths, prepared meals, ice cream and egg nog. The USDA accredits 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 interim

rule. Accordingly, OMB clearance is not required by § 350(h) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) 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 interim rule reflects a recommendation submitted to the Secretary by the NOSB for extending the use of synthetic methionine in organic poultry production until October 1, 2012. The NOSB evaluated this substance using criteria in the OFPA in response to 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. However, to encourage a transition of industry practices towards decreasing dependence on synthetic sources of the amino acid, the NOSB has recommended extending the allowed use of synthetic methionine in poultry production until October 1, 2012, with maximum allowable limits. The Secretary has reviewed the recommendation from the board. Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable and contrary to the public interest to give preliminary notice prior to putting this rule into effect in order to ensure the continued use of synthetic methionine after October 1, 2010, and avoid any disruption to the organic poultry market.

### 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:

<sup>1</sup> U.S. Department of Agriculture, Economic Research Service. 2009. Data Sets: *U.S. Certified Organic Farmland Acreage, Livestock Numbers and Farm Operations, 1992–2008*. <http://www.ers.usda.gov/Data/Organic/>.

<sup>2</sup> *Nutrition Business Journal*. 2009. *U.S. Organic Food Sales by Product (\$Mil) 1997–2008, 2009(e)–2014(e)—Chart 22*. Penton Media, Inc.

## PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

**Authority:** 7 U.S.C. 6501–6522.

■ 2. Section 205.603(d)(1) is revised to read as follows:

### § 205.603 Synthetic substances allowed for use in organic livestock production.

\* \* \* \* \*

(d) \* \* \*

(1) DL–Methionine, DL–Methionine—hydroxy analog, and DL–Methionine—hydroxy analog calcium (CAS #–59–51–8; 63–68–3; 348–67–4)—for use only in organic poultry production until October 1, 2012, at the following maximum levels of synthetic methionine per ton of feed: laying chickens—4 pounds; broiler chickens—5 pounds; turkeys and all other poultry—6 pounds.

\* \* \* \* \*

Dated: August 17, 2010.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–20977 Filed 8–23–10; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 922

[Doc. No. AMS–FV–10–0050; FV10–922–1 FR]

### Apricots Grown in Designated Counties in Washington; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2010–11 and subsequent fiscal periods from \$1.00 to \$1.50 per ton for Washington apricots. The Committee is responsible for local administration of the marketing order regulating the handling of apricots grown in designated counties in Washington. Assessments upon handlers of apricots are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period for the marketing order begins April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended or terminated.

**DATES:** *Effective Date:* August 25, 2010.

### FOR FURTHER INFORMATION CONTACT:

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Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 690–3919; Fax: (202) 720–8938; or E-mail: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 922 (7 CFR part 922), as amended, regulating the handling of apricots grown in designated counties in Washington, 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, apricot handlers in designated counties in Washington are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Washington apricots beginning April 1, 2010, and continue until amended, suspended, or terminated.

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 increases the assessment rate established for the Committee for the 2010–11 and subsequent fiscal periods from \$1.00 to \$1.50 per ton for Washington apricots handled under the order.

The 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 producers and handlers of apricots in designated counties in Washington. They are familiar with the Committee’s needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2009–10 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate of \$1.00 per ton of apricots handled. This rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 19, 2010, and unanimously recommended 2010–11 expenditures of \$8,145. In comparison, last year’s budgeted expenditures were \$7,843. In addition, the Committee recommended that the \$1.00 per ton assessment rate be increased by \$0.50 to \$1.50 per ton of apricots handled. Committee members reported that apricot production this season may be lower than that of last season since portions of the Washington apricot production area experienced freezing weather in October 2009, and high winds in April of this year. As a result, the Committee has estimated that shipments of fresh apricots will approximate 5,550 tons this season—somewhat less than the 6,860 tons of fresh apricots reported last season. The Committee thus recommended that the assessment rate be increased by \$0.50 to help ensure that budgeted expenses are adequately covered.

The major expenditures recommended by the Committee for the 2010–11 fiscal period include \$4,800 for the management fee, \$1,300 for Committee travel, \$100 for compliance, \$750 for the annual audit review, and \$1,195 for equipment maintenance, insurance, bonds, and miscellaneous expenses. In comparison, major