Proposed Rules

Federal Register
Vol. 76, No. 2
Tuesday, January 4, 2011

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

[Document Number AMS–TM–07–0136; TM–07–14PR]

RIN 0581–AC77

National Organic Program (NOP); Sunset Review (2011)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would address recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on November 5, 2009, and April 29, 2010. The recommendations addressed in this proposed rule pertain to the continued exemption (use) of 12 substances in organic production and handling. Consistent with the recommendations from the NOSB, this proposed rule would continue the exemption (use) of 12 substances on the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) (along with any restrictive annotations). These substances were originally added to the National List on September 12, 2006.

DATES: Comments must be received by February 3, 2011.

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–NOP, 1400 Independence Ave., SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250.
- *Internet: http://www.regulations.gov.*

Written comments responding to this proposed rule should be identified with the docket number AMS–TM–07–0136; TM–07–14. You should clearly indicate your position to continue the allowance of the substances identified in this proposed rule 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 for the substance. 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 (*http://www.regulations.gov*) Internet site. Comments submitted in response to this proposed rule will also be available for viewing in person at USDA–AMS, National Organic Program, 1400 Independence Ave., SW., Room 2646–South Building, 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: Melissa Bailey, Director, Standards Division, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

The Organic Foods Production Act of 1990 (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 that may be used in organic production and nonsynthetic (natural) substances that are prohibited in organic crop and livestock production. The National List also identifies nonagricultural nonsynthetic, nonagricultural synthetic and nonorganic agricultural substances that may be used 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 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 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 the sunset date, 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 #s 7440–44–0; 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 the sunset date, September 12, 2011.

In response to the sunset provisions in the OFPA, the Secretary published an Advanced Notice of Proposed Rulemaking (ANPR) (73 FR 13795) in the **Federal Register** on March 14, 2008, to announce the review of the 12 exemptions authorized under the National Organic Program (NOP) regulations. This ANPR also requested public comment on the continued use of such substances. The public comment period lasted 60 days.

We received 25 comments in response to the ANPR. Comments were received from producers, handlers, certifying agents, trade associations, organic associations, various industry groups, and a university. Some comments addressed more than one substance. We received general comments urging that the current listings remain as they are currently stated, and one general comment insisting that no chemicals should be allowed for use in organic products. Most commenters provided specific support for substances that they promoted, represented, or relied upon. Specific support was received for the following substances: Hydrogen chloride, Ferric phosphate, Egg white lysozyme, L-Malic acid, Microorganisms, Activated charcoal, Cyclohexylamine, Diethylaminoethanol,

Octadecylamine, Peracetic acid/Peroxyacetic acid, Sodium acid pyrophosphate, and Tetrasodium pyrophosphate.

The NOSB received additional public comment concerning the pending sunset of the 12 substances in response to three **Federal Register** Notices announcing meetings of the NOSB and its planned deliberations on recommendations involving Sunset 2011 substances. The three notices were published in the **Federal Register** as follows: March 20, 2009 (74 FR 11904), September 9, 2009 (74 FR 46411), and March 17, 2010 (75 FR 12723). The NOSB received further written and oral testimony at these public business meetings which occurred in Washington, DC on May 4–6, 2009, and November 3–5, 2009, and in Woodland, CA on April 26–29, 2010. The written comments can be retrieved via *http://www.regulations.gov* by searching for the document ID numbers: AMS–TM–09–0014 (May 2009 meeting); AMS–TM–09–0060 (November 2009 meeting); and AMS–NOP–10–0021 (April 2010). The oral comments were recorded in the meeting transcripts which are available on the NOP Web site, *http://www.ams.usda.gov/nop.*

As a result of the May 2009, November 2009, and April 2010, NOSB meetings, and in consideration of the comments received from the ANPR, the NOSB recommended that the Secretary renew the 12 exemptions on the National List (along with any restrictive annotations). The Secretary is issuing this proposed rule to reflect the recommendations of the NOSB, from November 2009 and April 2010, and to request public comment on the continued exemption (use) of 12 substances 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 fourteen 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), July 6, 2010 (75 FR 38693), August 24, 2010 (75 FR 51919), and December 13, 2010 (75 FR 77521). Additionally, proposed amendments to the National List were published on November 8, 2010 (75 FR 68505).

II. Overview of Proposed Renewals

From May 4, 2009, through April 29, 2010, the NOSB reviewed 12 exemptions that are authorized on the National List and set to expire on September 12, 2011. Using the evaluation criteria specified in the ANPR for sunset review, the NOSB reviewed these exemptions for continued authorization in organic agricultural production and handling. As a result of the NOSB's review, the NOSB recommended that the Secretary renew the 12 exemptions.

With respect to the criteria used to make recommendations regarding the continued authorization of exemptions and prohibitions, the NOSB's decision is based on public comments and applicable supporting evidence that expresses a continued need for the use or prohibition of the substance(s).

Concerning criteria used to make recommendations regarding the discontinuation of an authorized exempted synthetic substance or prohibited nonsynthetic substance, the NOSB's decision, for the exempted synthetic substance, is based on public comments and applicable supporting evidence that demonstrates the currently authorized exempted substance is: (a) Harmful to human health or the environment, (b) not necessary to the production of the agricultural products because of the availability of wholly nonsynthetic substitute products, or (c) inconsistent with organic farming and handling.

Renewals

After considering all public comments and supporting evidence, the NOSB determined that the 12 exemptions demonstrated a continued need for authorization in organic agricultural production and handling. On November 5, 2009, the NOSB finalized its recommendations on 11 of the 12 exemptions, and on April 29, 2010, the NOSB finalized its recommendation on Ferric phosphate.

The Agricultural Marketing Service (AMS) has reviewed and concurs with the NOSB recommendations. Accordingly, this proposed rule would continue the exemptions at § 205.601, along with any restrictive annotations, for the following synthetic substances allowed for use in organic crop production: Ferric phosphate (CAS # 10045–86–0); and Hydrogen chloride (CAS # 7647–01–0). This proposed rule would continue the exemptions at § 205.605(a), along with any restrictive annotations, for the following nonsynthetic, nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food groups(s))": Egg white lysozyme (CAS # 9001–63–2); L–Malic acid (CAS # 97–67–6); and Microorganisms. This proposed rule would continue the exemptions at § 205.605(b), along with any restrictive annotations, for the following synthetic, nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food groups(s))": Activated charcoal (CAS #s 7440–44–0; 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).

III. Related Documents

One advanced notice of proposed rulemaking with request for comments was published in **Federal Register** 73 FR 13795 on March 14, 2008, to make the public aware that the allowance of 12 synthetic and non-synthetic substances in organic production and handling will expire, if not reviewed by the NOSB and renewed by the Secretary.

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.*

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 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 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. 601–612) 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, 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 additional substances in agricultural production and handling. The AMS concludes that the economic impact of this addition of allowed substances, if any, would be minimal and 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 $7,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000.

According to USDA, Economic Research Service (ERS) data based on information from USDA-accredited certifying agents, the number of certified U.S. organic crop and livestock operations totaled nearly 13,000 and certified organic acreage exceeded 4.8 million acres in 2008.[1] ERS, based upon the list of certified operations maintained by the NOP, estimated the number of certified handling operations was 3,225 in 2007.[2] AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

The U.S. sales of organic food and beverages have grown from $3.6 billion in 1997 to nearly $21.1 billion in 2008.[3] The organic industry is viewed as the fastest growing sector of agriculture, representing over 3 percent of overall food sales in 2009. Between1990 and 2008, organic food sales have historically demonstrated a growth rate between 15 to 24 percent each year. In 2009, organic food sales grew 5.1%.[4]

In addition, USDA has 98 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 accredited certifying agents 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.

E. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted to the Secretary by the NOSB for the continuation of 12 exemptions 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 is critical to organic production, and this rulemaking should be completed before September 12, 2011.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals,

[1] 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/.*

[2] U.S. Department of Agriculture, Economic Research Service, 2009. *Data Sets: Procurement and Contracting by Organic Handlers: Documentation. http://www.ers.usda.gov/Data/OrganicHandlers/Documentation.htm.*

[3] Dimitri, C., and L. Oberholtzer. 2009. *Marketing U.S. Organic Foods: Recent Trends from Farms to Consumers,* Economic Information Bulletin No. 58, U.S. Department of Agriculture, Economic Research Service, *http://www.ers.usda.gov/Publications/EIB58.*

[4] Organic Trade Association's *2010 Organic Industry Survey, http://www.ota.com.*

Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

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

Authority: 7 U.S.C. 6501–6522.

Dated: December 22, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–33138 Filed 1–3–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM439 Special Conditions No. 25–10–04–SC]

Special Conditions: Gulfstream Model GVI Airplane; Single-Occupant Side-Facing Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Gulfstream GVI airplane. This airplane will have a novel or unusual design feature(s) associated with single-occupant side-facing seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by February 18, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM439, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM439. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Daniel Jacquet, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2676; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On September 28, 2006, Gulfstream Aerospace Corporation (hereafter referred to as "Gulfstream") applied for an FAA type certificate for its new Gulfstream Model GVI passenger airplane. The Gulfstream Model GVI airplane will be an all-new, two-engine jet transport airplane with an executive cabin interior. The maximum takeoff weight will be 99,600 pounds, with a maximum passenger count of 19 passengers.

Type Certification Basis

Under provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Gulfstream Model GVI airplane (hereafter referred to as "the GVI") meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–119 and 25–122. If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the GVI because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to complying with the applicable airworthiness regulations and special conditions, the GVI must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101.

Novel or Unusual Design Features

The GVI offers interior arrangements, which include single-occupant side-facing seat installations. Dynamic testing of all seats approved for occupancy during takeoff and landing is required by § 25.562. The pass/fail criteria for the testing developed in Amendment 25–64 to § 25.562 focused primarily on fore/aft facing seats. Side-facing seat installations were not adequately addressed for transport category airplanes in this amendment.

Discussion of Proposed Special Conditions

Section 25.785(b), "Seats, berths, safety belts, and harnesses," requires that "each seat * * * at each station" designated as occupiable during takeoff and landing must be designed so that a person making proper use of these facilities "will not suffer serious injury in an emergency landing as a result of the inertia forces specified in §§ 25.561 and 25.562." Additionally, § 25.562, "Emergency landing dynamic conditions," requires dynamic testing of all seats occupied during takeoff and landing. The relative forces and injury mechanisms affecting the occupants of side-facing seats during an emergency landing are different from those of standard forward- or aft-facing seats, or seats equipped with conventional restraint systems.