

# Rules and Regulations

Federal Register

Vol. 79, No. 13

Tuesday, January 21, 2014

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 205

[Document Number AMS–NOP–11–0073; NOP–11–14]

#### National Organic Program: Notice of Final Guidance on Certification Requirements for Handling Unpackaged Organic Products

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

**ACTION:** Notice of availability of final guidance.

**SUMMARY:** The National Organic Program (NOP) is announcing the availability of a final guidance document intended for use by accredited certifying agents, certified operations and non-certified handlers of certified organic products. The guidance document is entitled: Certification Requirements for Handling Unpackaged Organic Products (NOP 5031). This guidance document is intended to inform the public of NOP's current thinking on this topic.

**DATES:** The final guidance document announced by this notice is effective on January 22, 2014.

**FOR FURTHER INFORMATION CONTACT:** Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250, Email: [Melissa.bailey@ams.usda.gov](mailto:Melissa.bailey@ams.usda.gov); Telephone: (202) 720–3252; Fax: (202) 205–7808.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 3, 2012, the National Organic Program (NOP) published in the **Federal Register** a notice of availability with request for public comment on a draft guidance document addressing the

certification requirements for handlers of unpackaged products (76 FR 5415). The NOP selected the topic for the draft guidance in response to a recommendation issued by the National Organic Standards Board (NOSB) in October 2010. On October 28, 2010, the NOSB finalized a recommendation requesting that the NOP clarify the requirements and limitations of 7 CFR section 205.101(b) of the USDA organic regulations.<sup>1</sup> This section of the regulations addresses the conditions that a handling operation must meet in order to be excluded from the organic certification requirements of 7 CFR Part 205. The NOSB recommended that the NOP issue guidance to clarify how these conditions apply to handlers of bulk, unpackaged organic products. The draft guidance can be viewed on the NOP Web site at <http://www.ams.usda.gov/NopDraftGuidance>. The 60-day comment period closed on April 3, 2012.

NOP received approximately 25 individual comments on the draft guidance document. Based upon the comments received, the NOP revised and is publishing a final guidance document on Certification Requirements for Handling Unpackaged Organic Products (NOP 5031). The guidance document includes an appendix (NOP 5031–1) where the NOP provides a complete discussion of the comments received and the rationale behind any changes made to the guidance documents.

In addition to responding to the NOSB's October 2010 recommendation, this final guidance addresses a finding from a February 2012 Office of Inspector General (OIG) audit and a July 2013 OIG audit on organic milk.<sup>2</sup> The OIG audits stated that the NOP needs to ensure that organic milk is not coming into contact with prohibited substances while being transported. In OIG's recommendations, it stated that the NOP should ensure that transporters are either certified or

included in the responsible parties' Organic System Plan (OSP).

In response to the OIG, this final guidance clarifies that transporters of unpackaged bulk products such as organic milk are not considered handlers under the USDA organic regulations and, therefore, do not need to obtain certification. The guidance states that it is the certified organic operation responsible for the organic products that are transported who must prevent commingling and contamination of the organic products during transportation, fully describe the transportation practices in their organic system plan, maintain sufficient records for the auditing and traceability of transported organic products, and ensure that the transportation records for organic products are available for inspection. This approach ensures that certifying agents have oversight regarding the transport of unpackaged organic products through their certified operations and can ensure that prohibited substances have not come into contact with these products through a complete, verifiable audit trail.

The final guidance is available from the NOP through "The Program Handbook: Guidance and Instructions for Accredited Certifying Agents (ACAs) and Certified Operations". This Handbook provides those who own, manage, or certify organic operations with guidance and instructions that can assist them in complying with the USDA organic regulations. The current edition of the Program Handbook is available online at <http://www.ams.usda.gov/nop>.

##### II. Significance of Guidance

This final guidance document is being issued in accordance with the Office of Management and Budget (OMB) Bulletin on Agency Good Guidance Practices (GGPs) (January 25, 2007, 72 FR 3432–3440). The purpose of GGPs is to ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements. This guidance represents the NOP's current thinking on the topic. It does not create or confer any rights for, or on, any person and does not operate to bind the NOP or the public. Guidance documents are intended to provide a uniform

<sup>1</sup> NOSB Recommendation: Clarifying Limitations of § 205.101(b). Issued on October 28, 2010. Available on the NOP Web site at: <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5087789&acct=nosb>.

<sup>2</sup> February 2012 OIG Audit on National Organic Program: Organic Milk. Available on the NOP Web site at: <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5100590>. July 2013 OIG Audit on National Organic Program: Organic Milk. Available from OIG at: <http://www.usda.gov/oig/webdocs/01601-0002-32.pdf>.

method for operations to comply with the Organic Foods Production Act (OFPA) and the USDA organic regulations that can reduce the burden of developing their own methods and simplify audits and inspections. Alternative approaches that can demonstrate compliance with the OFPA, as amended (7 U.S.C. 6501–6522), and its implementing regulations are also acceptable. As with any alternative compliance approach, the NOP strongly encourages industry to discuss alternative approaches with the NOP before implementing them to avoid unnecessary or wasteful expenditures of resources, and to ensure the proposed alternative approach complies with the OFPA and its implementing regulations.

#### Electronic Access

Persons with access to Internet may obtain the final guidance at the NOP's Web site at <http://www.ams.usda.gov/nop>. Request for hard copies of the final guidance document can be obtained by submitting a written request to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

**Authority:** 7 U.S.C. 6501–6522.

Dated: January 15, 2014.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2014–01071 Filed 1–17–14; 8:45 am]

**BILLING CODE 3410–02–P**

## FEDERAL ELECTION COMMISSION

### 11 CFR Part 111

[Notice 2014–01]

#### Extension of Administrative Fines Program

**AGENCY:** Federal Election Commission.

**ACTION:** Final rule.

**SUMMARY:** Under the Federal Election Commission's Administrative Fines Program ("AFP"), the Commission may assess civil monetary penalties for certain violations of the reporting requirements of the Federal Election Campaign Act of 1971, as amended ("FECA"). Congress recently amended FECA to extend the end date of the statutory authorization for the AFP to December 31, 2018. Accordingly, the Commission is extending its AFP regulations through the new statutory expiration date. The Commission is also deleting one administrative provision from its AFP regulations. Further information is provided in the

Supplementary Information that follows.

**DATES:** *Effective Date:* January 21, 2014.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Knop, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** Under 2 U.S.C. 437g(a)(4)(C), the Commission is authorized to assess civil monetary penalties for certain violations of FECA's reporting requirements. Congress initially enacted this authorization in 2000 with a sunset date of December 31, 2001.<sup>1</sup> Congress has since extended the AFP's statutory authorization several times.<sup>2</sup> Most recently, Congress extended the statute to encompass violations relating to reporting periods that end on or before December 31, 2018. Act of Dec. 26, 2013, Public Law 113–72, sec. 1.<sup>3</sup>

The Commission's regulations implementing the AFP can be found at 11 CFR 111.30–111.46. Section 111.30 specifies the end date of the program; each time Congress has extended the statute that authorizes the AFP, the Commission has revised the end date in section 111.30 accordingly.<sup>4</sup> To implement Congress's most recent extension of the AFP's authorization — and to obviate the need to revise section 111.30 each time Congress extends the statute—this final rule revises section 111.30 to provide that the AFP applies to reporting periods that “end on or before the date specified in 2 U.S.C. 437g(a)(4)(C)(v).”

The Commission's current AFP regulations apply “to reporting periods

<sup>1</sup> Treasury and General Government Appropriations Act, 2000, Public Law 106–58, sec. 640, 113 Stat. 430, 476–77 (1999).

<sup>2</sup> Act of Oct. 16, 2008, Public Law 110–433, sec. 1(a), 122 Stat. 4971 (extending authorization through Dec. 31, 2013); Transportation, Treasury, Housing and Urban Development, The Judiciary, The District of Columbia, and Independent Agencies Appropriations Act, 2006, Public Law 109–115, sec. 721, 119 Stat. 2396, 2493–94 (2005) (extending through Dec. 31, 2008); Consolidated Appropriations Act, 2004, Public Law 108–199, sec. 639, 118 Stat. 3, 359 (extending through Dec. 31, 2005); Treasury and General Government Appropriations Act, 2002, Public Law 107–67, sec. 642, 115 Stat. 514, 555 (2001) (extending through Dec. 31, 2003).

<sup>3</sup> In addition to extending the end date of the AFP statute, the 2013 act also authorized the Commission to expand the scope of the AFP to encompass additional categories of reporting violations. The Commission intends to address that expansion of the AFP through a separate rulemaking.

<sup>4</sup> Extension of Administrative Fines Program, 73 FR 72687 (Dec. 1, 2008); Extension of Administrative Fines Program, 70 FR 75717 (Dec. 21, 2005); Extension of Administrative Fines Program, 69 FR 6525 (Feb. 11, 2004); Extension to Administrative Fines, 66 FR 59680 (Nov. 30, 2001).

that . . . end on or before December 31, 2013.” 11 CFR 111.30. Because the statutory extension was not enacted until late December 2013, there is a short gap between the end date of the Commission's current regulations and the effective date of this final rule on January 21, 2014. Reports covering reporting periods that end during this gap are not subject to the AFP; they are instead subject to the Commission's enforcement procedures set forth at 11 CFR part 111, subpart A.<sup>5</sup> See 11 CFR 111.31(a).

This final rule also deletes 11 CFR 111.41, which requires administrative fines to be paid by check or money order. Deleting this requirement will enable the Commission to provide filers with additional and convenient ways to pay administrative fines, such as by credit card.

The Commission is promulgating this final rule without advance notice or an opportunity for comment because it falls under the “good cause” exemption of the Administrative Procedure Act. See 5 U.S.C. 553(b)(B). That exemption allows agencies to dispense with notice and comment when “impracticable, unnecessary, or contrary to the public interest.” *Id.* The Commission finds that notice and comment are unnecessary here because this final rule merely extends the applicability of the existing AFP and deletes one administrative provision; the final rule makes no substantive changes to the AFP. See Extension of Administrative Fines Program, 73 FR 72687 (Dec. 1, 2008) (extending AFP's effective date and making one non-substantive change without notice and comment, and observing that all substantive AFP regulations were subject to notice and comment in 2000, 2002, and 2006). In addition, this final rule falls within the “good cause” exception to the delayed effective date provisions of the Administrative Procedure Act and the Congressional Review Act. 5 U.S.C. 553(d), 808(2). Accordingly, this final rule is effective upon publication in the **Federal Register**. The Commission is not required to submit this rule for congressional review. See 2 U.S.C. 438(d)(1), (4).

#### Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The provisions of the Regulatory Flexibility Act are not applicable to this

<sup>5</sup> These reports are: (1) Post-general reports in relation to the December 17, 2013, special general election in Alabama's 1st congressional district; and (2) 48-hour contribution notices in relation to the January 14, 2014, special primary election in Florida's 13th congressional district.