

Proposed Rules

Federal Register

Vol. 68, No. 99

Thursday, May 22, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Docket Number TM-03-02]

RIN 0581-AC27

National Organic Program; Proposed Amendments to the National List of Allowed and Prohibited Substances

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) to reflect recommendations submitted to the Secretary by the National Organic Standards Board (NOSB) from November 15, 2000 through September 17, 2002. Consistent with recommendations from the NOSB, this proposed rule would: add five substances, along with any restrictive annotations, to the National List, and revise the annotation of one substance.

DATES: Comments must be received by June 2, 2003.

ADDRESSES: Interested persons may comment on this proposed rule using the following procedures:

- Mail: Comments may be submitted by mail to: Richard H. Mathews, Program Manager, National Organic Program, USDA-AMS-TMP-NOP, 1400 Independence Ave., SW., Room 4008-So., Ag Stop 0268, Washington, DC 20250.
- E-mail: Comments may be submitted via the Internet to: National.List@usda.gov.
- Fax: Comments may be submitted by fax to: (202) 205-7808.
- Written comments on this proposed rule should be identified with the docket number TMD-03-02. Commenters should identify the topic and section number of this proposed rule to which the comment refers.

- Clearly indicate if you are for or against the proposed rule or some portion of it and your reason for it. Include recommended language changes as appropriate.

- Include a copy of articles or other references that support your comments. Only relevant material should be submitted.

It is our intention to have all comments to this proposed rule, whether submitted by mail, e-mail, or fax, available for viewing on the NOP homepage. Comments submitted in response to this proposed rule will be available for viewing in person at USDA-AMS, Transportation and Marketing, Room 4008-South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720-3252.

FOR FURTHER INFORMATION CONTACT: Toni A. Strother, Agricultural Marketing Specialist, Telephone: (202) 720-3252; Fax: (202) 205-7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000 the Secretary established, within the National Organic Standards (NOS) (7 CFR part 205), the National List (§§ 205.600 through 205.607). The National List is the Federal list that identifies synthetic substances and ingredients that are allowed and nonsynthetic (natural) substances and ingredients that are prohibited for use in organic production and handling. Since established, the National List has not been amended. However, under the authority of the Organic Foods Production Act of 1990 (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.

This proposed rule would amend the National List to reflect recommendations submitted to the Secretary by the NOSB from November 15, 2000 through September 17, 2002. Between the specified time period, the NOSB has recommended that the Secretary add five substances to § 205.605 of the National List based on

petitions received from industry participants. These substances were evaluated by the NOSB using the criteria specified in OFPA (7 U.S.C. 6517 and 6518) and the NOS. The NOSB also recommended that the Secretary revise the annotation of one substance included within section 205.605.

The NOSB has recommended that the Secretary add additional substances to sections 205.605 and 205.606 which have not been included in this proposed rule but are under review and, as appropriate, will be included in future rulemaking.

II. Overview of Proposed Amendments

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

§ 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))."

This proposed rule would amend paragraph (a) of § 205.605 by adding calcium sulfate—mined and glucono delta-lactone. This proposed rule would also amend paragraph (b) of § 205.605 by adding animal enzymes—without Lysosyme, cellulose, and tetrasodium pyrophosphate.

This proposed rule would revise current paragraph (b) of § 205.605 by amending an annotation to read as follows:

Potassium hydroxide—prohibited for use in lye peeling of fruits and vegetables except when used for peeling peaches during the Individually Quick Frozen (IQF) production process.

III. Related Documents

Eight notices were published regarding the meetings of the NOSB and its deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this proposed rule were announced for NOSB deliberation in the following **Federal Register** Notices: (1) 65 FR 64657, October 30, 2000, (Animal enzymes); (2) 66 FR 10873, February 20, 2001, (Calcium sulfate); (3) 66 FR 48654, September 21, 2001, (Cellulose, and Potassium hydroxide); and (4) 67 FR 54784, August 26, 2002, (Glucono delta-lactone, and Tetrasodium pyrophosphate).

IV. Statutory and Regulatory Authority

The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*), authorizes the Secretary, at § 6517 (d)(1), 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 onto or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOS. The current petition process (65 FR 43259) can be accessed through the NOP Web site at <http://www.ams.usda.gov/nop>.

A. Executive Order 12866

This action has been determined to be non-significant for purposes of Executive Order 12866, and therefore, does not have to be 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 was reviewed under this Executive Order and no additional related information has been obtained since then. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under section 2115 of the Organic Foods Production Act (OFPA) (7 U.S.C. 6514) 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 section 2115 (b) of the OFPA (7 U.S.C. 6514 (b)). States are also preempted under sections 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 regulation 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 the Environmental Protection Agency (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.

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. AMS has also considered the economic impact of this action on small entities. Due to the changes reflected in this proposed rule that allow the use of additional substances in agricultural production and handling, the Administrator of AMS certifies that this

proposed rule will not have a significant economic impact on a substantial number of small entities. This action relaxes the regulations published in the final rule and provides small entities with more tools to use in day-to-day operations. 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 \$750,000 and small agricultural producers are defined as those having annual receipts of less than \$5,000,000.

The U.S. organic industry at the end of 2001 included nearly 6,600 certified crop and livestock operations, including organic production and handling operations, producers, and handlers. These operations reported certified acreage totaling more than 2.34 million acres, 72,209 certified livestock, and 5.01 million certified poultry. Data on the numbers of certified handling operations are not yet available, but likely number in the thousands, as they would include any operation that transforms raw product into processed products using organic ingredients. Growth in the U.S. organic industry has been significant at all levels. From 1997 to 2001, the total organic acreage grew by 74 percent; livestock numbers certified organic grew by almost 300 percent over the same period, and poultry certified organic increased by 2,118 percent over this time. Sales growth of organic products has been equally significant, growing on average around 20 percent per year. Sales of organic products were approximately \$1 billion in 1993, but are estimated to reach \$13 billion this year, according to the Organic Trade Association (the association that represents the U.S. organic industry). In addition, USDA has accredited 81 certifying agents who have applied to USDA to be accredited in order to 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 believe that most of these entities would be considered small entities under the criteria established by the SBA.

Additional regulatory flexibility analysis beyond the regulatory flexibility analysis published in the NOP final rule on December 21, 2000, is not required for the purposes of this proposed rule. Comments from small entities affected by parts of this proposed rule will be considered in relation to the requirements of the RFA. These comments must be submitted

separately and cite 5 U.S.C. 609 in the correspondence.

D. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the existing information collection requirements for the NOP are approved under OMB number 0581-0181. 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, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulation at 5 CFR Part 1320.

E. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted to the Secretary by the NOSB. The five substances proposed to be added to the National List were based on petitions from the industry and evaluated by the NOSB using criteria in the Act and the regulations. Because these substances are critical to organic production and handling operations, producers and handlers should be able to use them in their operations as soon as possible. Accordingly, AMS believes that a 10-day period for interested persons to comment on this rule is appropriate.

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 proposed to be 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.

2. Section 205.605 (proposed to be revised at 68 FR 18560, April 16, 2003) is amended by:

- a. Adding two substances to paragraph (a).
- b. Adding three substances to paragraph (b).
- c. Revising Potassium hydroxide in paragraph (b).

The additions and revisions read as follows:

§ 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) * * *
 * * * * *
 Calcium sulfate—mined.
 * * * * *
 Glucono delta-lactone.
 * * * * *

(b) * * *
 Animal enzymes—(Rennet—animals derived; Catalase—bovine liver; Animal lipase; Pancreatin; Pepsin; and Trypsin).
 * * * * *

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

Potassium hydroxide—prohibited for use in lye peeling of fruits and vegetables except when used for peeling peaches during the Individually Quick Frozen (IQF) production process.
 * * * * *

Tetrasodium pyrophosphate—for use only in textured meat analog products.
 * * * * *

Dated: May 16, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Services.

[FR Doc. 03-12803 Filed 5-21-03; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV03-930-2 PR]

Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the assessment rate for tart cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.00175 to \$0.0019 per pound. It would also increase the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.000875 to \$0.0019 per pound. The single assessment rate for all assessable tart cherries was recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2002–2003 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry

handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1, 2002, and ends June 30, 2003. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by June 2, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: moabdocket.clerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: <http://www.ams/usda.gov/fv/moab/html>.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301)–734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the “order.” The marketing agreement and order are 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 proposed rule in