

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

RIN 3206-AL68

### Prevailing Rate Systems; Redefinition of the New Orleans, LA, Appropriated Fund Federal Wage System Wage Area

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management is issuing a final rule to add St. Charles and St. John the Baptist Parishes, Louisiana, to the survey area of the New Orleans, LA, appropriated fund Federal Wage System wage area. The purpose of this change is to ensure the lead agency for the New Orleans wage area is able to obtain wage data that best represent the prevailing rates paid by businesses in the area.

**DATES:** *Effective date:* This regulation is effective on September 18, 2008.

**FOR FURTHER INFORMATION CONTACT:** Madeline Gonzalez, (202) 606-2838; e-mail: [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov); or Fax: (202) 606-4264.

**SUPPLEMENTARY INFORMATION:** On July, 9 2008, the U.S. Office of Personnel Management (OPM) issued an interim rule (73 FR 39213) to add St. Charles and St. John the Baptist Parishes, Louisiana, to the survey area of the New Orleans, LA, appropriated fund Federal Wage System (FWS) wage area. The interim rule had a 30-day public comment period, during which OPM received no comments.

This change will be effective for the next full-scale wage survey in the wage area, which is scheduled to begin in November 2008.

## Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

**Michael W. Hager,**  
*Acting Director.*

■ Accordingly, under the authority of 5 U.S.C. 5343, the interim rule published on July 9, 2008, amending 5 CFR part 532 (73 FR 39213) is adopted as final with no changes.

[FR Doc. E8-21831 Filed 9-17-08; 8:45 am]

**BILLING CODE 6325-39-P**

## DEPARTMENT OF AGRICULTURE

### Agriculture Marketing Service

### 7 CFR Part 205

[Docket Number AMS-TM-08-0025; TM-08-05FR]

RIN 0581-AC81

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) to reflect one recommendation submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on May 22, 2008. Consistent with the recommendation from the NOSB, this final rule revises the annotation of one substance on the National List, Methionine, to extend its use in organic poultry production until October 1, 2010.

**DATES:** This rule becomes effective September 19, 2008.

## FOR FURTHER INFORMATION CONTACT:

Richard H. Mathews, Chief, Standards Development and Review Branch, Telephone: (202) 720-3252; Fax: (202) 205-7808.

## SUPPLEMENTARY INFORMATION:

### I. Background

On December 21, 2000, the Secretary established, within the NOP [7 CFR part 205], the National List regulations §§ 205.600 through 205.607. This National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990 (OFPA), as amended, (7 U.S.C. 6501 *et seq.*), and NOP regulations, in § 205.105, specifically prohibit the use of any synthetic substance for organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling be 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 nine 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), and December 12, 2007 (72 FR 70479). Additionally, an amendment to the National List, proposed on July 14, 2008, (73 FR 40194), is currently pending.

This final rule amends the National List to reflect one recommendation submitted to the Secretary by the NOSB on May 22, 2008.

### II. Overview of Proposed Amendment

The following provides an overview of the proposed amendment to § 205.603 of the National List:

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

This final rule amends § 205.603(d)(1) by changing “2008” to “2010”. 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, 2010.

### III. Related Documents

On April 4, 2008, a notice was published in the **Federal Register** (73 FR 18491) announcing the meeting of the NOSB and its planned deliberations on recommendations involving the use of Methionine in organic poultry production. NOSB meetings are open to the public and allow for public participation. The recommendation to extend Methionine’s use in organic poultry production included in this final rule was published as a proposed rule on July 14, 2008 (73 FR 40197).

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

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

jurisdiction to review the Secretary’s decision.

### C. Regulatory Flexibility Act

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

Pursuant to the requirements set forth in the RFA, AMS performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). The AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this final rule would not be significant. The current approval for the use of Methionine in organic poultry production will expire October 1, 2008. The effect of this final rule is to allow the continued use of Methionine through October 1, 2010. The 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, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$6,500,000 and small agricultural producers are defined as those having annual receipts of less than \$750,000.

The U.S. organic industry at the end of 2001 included nearly 6,949 certified organic crop and livestock operations. These operations reported certified acreage totaling more than 2.09 million acres of organic farm production. Data on the numbers of certified organic handling operations (any operation that transforms raw product into processed products using organic ingredients) were not available at the time of survey in 2001; but they were estimated to be in the thousands. By the end of 2005, the number of U.S. certified organic crop, livestock, and handling operations totaled about 8,500. Based on 2005 USDA, Economic Research Service, data

from USDA-accredited certifying agents, U.S. certified organic acreage increased to 4 million acres.

The U.S. sales of organic food and beverages have grown from \$1 billion in 1990 to nearly \$17 billion in 2006. The organic industry is viewed as the fastest growing sector of agriculture, representing almost 3 percent of overall food and beverage sales. Since 1990, organic retail sales have historically demonstrated a growth rate between 20 to 24 percent each year, including a 22 percent increase in 2006.

In 2005, U.S. retail sales of organic poultry products were \$161 million. The growth rate for organic poultry retail sales is estimated at between 23 and 38 percent per year. Organic egg sales were \$161 million in 2005 and are projected to grow at a rate of 8 to 13 percent per year. The organic industry, in 2005, raised approximately 13.8 million birds. Organic poultry is raised in 40 of the 50 states. In addition to being sold as whole products, organic eggs and poultry are used in the production of organic processed products such as eggnog, ice cream, soups, broth, noodles, French toast, pancakes, waffles, tartar sauce, hollandaise sauce, mayonnaise, salad dressing, cookies, cakes, cheese cakes, bread, and other bakery goods.

In addition, USDA has 95 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 entities would be considered small entities under the criteria established by the SBA.

#### *D. Paperwork Reduction Act*

No additional collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, or OMB's implementing 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. Discussion of Comments Received*

Six (6) comments were received on the proposed revision to extend the use of synthetic Methionine in organic poultry production until October 1, 2010. Comments were received from a consumer, a poultry producer, a trade association, a Cooperative, and 2 accredited certifying agents. Two (2) comments opposed and 4 supported extending the current authorization for the use of synthetic Methionine.

One or more of the comments in support of the extension either acknowledged the need to continue to look for substitutes or find alternatives for Methionine or supported the Board's efforts in this regard. Comments in opposition were received from a consumer and a poultry producer associated with an accredited certifying agent who forwarded a comment from the accredited certifying agent. The consumer opposed the use of synthetic substances in organic production in general. The poultry producer opposed extended authorization for the use of Methionine and claims to be raising broiler and breeder chickens and turkeys without the use of Methionine. Neither commenter provided any evidence that the National Organic Standards Board's recommendation to extend the authorization for Methionine was in error or that wholly natural substitute products are presently available in sufficient supplies to meet poultry producer needs. After full consideration of these comments, we have determined that the record supports extension of the authorized use of Methionine until October 1, 2010. This extension will provide the organic feed sector with the time to create sufficient supplies of wholly natural substitute products.

#### *F. Effective Date*

This final rule reflects recommendations submitted to the Secretary by the NOSB for extending the use of Methionine, a synthetic substance, in organic poultry production until October 1, 2010. The NOSB evaluated this substance using criteria in the OFPA. The substance's evaluation was initiated by a petition from the Methionine Task Force.

The NOSB 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. Loss of the use

of Methionine, at this time, would disrupt the well-established organic poultry market and cause substantial economic harm to organic poultry operations, as well as to organic handling operations that rely on organic eggs and poultry in the production of organic processed products.

Accordingly, pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rulemaking should be completed before the use of Methionine expires for organic poultry operations on October 1, 2008.

#### **List of Subjects in 7 CFR Part 205**

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

■ For the reasons set forth in the preamble, 7 CFR part 205, subpart G is amended as follows:

#### **PART 205—NATIONAL ORGANIC PROGRAM**

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

**Authority:** 7 U.S.C. 6501–6522.

#### **§ 205.603 [Amended]**

■ 2. Section 205.603(d)(1) is amended by removing “2008” and adding “2010” in its place.

Dated: September 12, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–21785 Filed 9–17–08; 8:45 am]

**BILLING CODE 3410–02–P**

#### **DEPARTMENT OF AGRICULTURE**

#### **Animal and Plant Health Inspection Service**

#### **9 CFR Parts 71, 77, 78, 79, and 80**

**[Docket No. APHIS–2008–0077]**

**RIN 0579–AC84**

#### **National Animal Identification System; Use of 840 Animal Identification Numbers for U.S.-Born Animals Only**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

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

**SUMMARY:** We are amending the regulations concerning the interstate