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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS-NOP-11-0063; NOP-11-11FR]

RIN 0581-AD018

National Organic Program (NOP); 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 enact one recommendation submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on April 29, 2010. This final rule revises the annotation for one substance on the National List, methionine, to reduce the maximum levels of synthetic methionine allowed in organic poultry production after October 1, 2012. This final rule permits the use of synthetic methionine at the following maximum levels per ton of feed after October 1, 2012: laying and broiler chickens – 2 pounds; turkeys and all other poultry – 3 pounds. This action also corrects the Chemical Abstracts Service (CAS) numbers for the allowable forms of synthetic methionine.

DATES: Effective Date: This rule is effective on October 2, 2012.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, 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 sections 205.600 through 205.607. The 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 nonagricultural 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. 6501-6522), and NOP regulations, in section 205.105, specifically prohibit the use of any synthetic substance in 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 must also appear on the National List.

Under the authority of the OFPA, the National List can be amended by the Secretary based on recommendations developed by the National Organic Standards Board (NOSB). Since established, the NOP has published multiple amendments to the National List: 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); December 13, 2010 (75 FR 77521); March 14, 2011 (76 FR 13504); August 3, 2011 (76 FR 46595); February 14, 2012 (77 FR 8089); May 15, 2012 (77 FR 28472); June 6, 2012 (77 FR 33290); and August 2, 2012 (77 FR 45903).

Additionally, a proposed amendment to the National List was published on January 12, 2012 (77 FR 1980).

This final rule amends the National List to enact a recommendation submitted to the Secretary by the NOSB on April 29, 2010.

II. Overview of Amendment

The following provides an overview of the amendment made to the designated section of the National List regulations:

Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

This final rule amends the listing for synthetic methionine at section 205.603(d)(1) of the National List regulations by removing the expiration date “October 1, 2012”, revising the maximum levels of synthetic methionine allowed per ton of feed for organic poultry, and correcting the Chemical Abstracts Service (CAS) numbers in the annotation as follows:

(d)(1) DL–Methionine, DL–Methionine—hydroxy analog, and DL–Methionine—hydroxy analog calcium (CAS #'s 59–51–8, 583–91–5, 4857–44–7, and 922–50–9)—for use only in organic poultry production at the following maximum levels of synthetic methionine per ton of feed: laying and broiler chickens – 2 pounds; turkeys and all other poultry – 3 pounds.

Methionine is classified as an essential amino acid for poultry because it is needed to maintain viability and must be acquired through the diet. Methionine is required for proper cell development and feathering in poultry. Natural feed sources with a high percentage of methionine include blood meal, fish meal, crab meal, corn gluten meal, alfalfa meal, and sunflower seed meal. Synthetic methionine is also used in poultry feed. This substance is a colorless or white crystalline powder that is soluble in water. It is regulated as an animal feed nutritional supplement by the Food and Drug Administration (21 CFR 582.5475).

In 2001, the NOSB evaluated a technical advisory panel analysis of methionine against the criteria provided in the OFPA, and determined that the use of synthetic methionine in organic poultry feed is compatible with a system of organic poultry production. Based on multiple NOSB recommendations, AMS has amended section 205.603 of the National List to allow methionine as a synthetic substance for use in organic poultry production four times (68 FR 61987, 70 FR 61217, 73 FR 54057, and 75 FR 51919). AMS published a complete account of the past NOSB recommendations and rulemaking pertaining to methionine in the interim rule published in the Federal Register on August 24, 2010 (75 FR 51919) (finalized on March 14, 2011 (76 FR 13501)).

On July 31, 2009, the Methionine Task Force (MTF), which is comprised of organic poultry producers, submitted a new petition requesting to extend the allowance for synthetic methionine for five years until October 2014. In addition, the MTF proposed that the total amount of synthetic methionine in the diet remain below the following levels, calculated as the average pounds per ton of 100% synthetic methionine over the life of the bird: laying chickens – 4 pounds; broiler chickens – 5 pounds; and, turkey and all other poultry – 6 pounds. In consideration of the July 2009 petition and public comments, the NOSB issued two recommendations on April 29, 2010. These recommendations acknowledged a need for the continued allowance of synthetic methionine, and conveyed the intent to decrease the amount of synthetic methionine allowed in organic poultry production and encourage development of natural alternatives. One recommendation proposed to allow synthetic methionine in organic poultry production until October 1, 2012, at the following maximum levels per ton of feed: laying chickens – 4 pounds; broiler chickens – 5 pounds; and turkey and all other poultry – 6

pounds. The first recommendation was implemented through a final rule published on March 14, 2011 (76 FR 13501).

This final rule addresses the second NOSB recommendation on synthetic methionine from April 2010.¹ This recommendation was based upon their evaluation of a petition submitted by the Methionine Task Force, a group of organic poultry producers, a third party technical review, and public comments received as part of their April 2010 public meeting.² In their deliberations, the NOSB conveyed that the intent of this recommendation was to balance various interests including: (i) providing for the basic maintenance requirements of organic poultry; (ii) satisfying consumer preference to reduce the use of synthetic methionine in organic poultry production; and (iii) motivating the organic poultry industry to continue the pursuit of commercially sufficient sources of allowable natural sources of methionine. A detailed discussion of the NOSB recommendation is available in the proposed rule which was published in the Federal Register on February 6, 2012 (77 FR 5717).³

This NOSB recommendation from April 2010 recommended that AMS delete the expiration date from the substance's current restrictive annotation to provide for use of synthetic methionine in organic production after its current expiration date, October 1, 2012.⁴ In response to the NOSB recommendation and public comment, this final rule removes the October 1, 2012

¹ NOSB recommendation on Methionine, April 2010. Retrieved from the NOP website at: <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5085081&acct=nosb>

² The technical report and the petition for synthetic methionine, submitted by Dave Matinelli on behalf of the Methionine Task Force on July 2009, is retrievable from the NOP Website in the Petitioned Substances Database under "Methionine" at: <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5084508&acct=nopgeninfo>

³ There is an incorrect statement about the April 2010 NOSB recommendation in the proposed rule (77 FR 5717). On page 5718, the proposed rule states that "the second NOSB recommendation from April 2010...proposed reduced maximum levels of synthetic methionine after October 1, 2015". The date in this statement is incorrect. This statement should have read "the second NOSB recommendation from April 2010...proposed reduced maximum levels of synthetic methionine after October 1, 2012" (emphasis added).

⁴ On February 29, 2012, AMS published a correction to the proposed rule addressing this NOSB recommendation (77 FR 12216). This correction removed the October 2, 2012 date from the amendatory language for synthetic methionine which was proposed in the proposed rule. This date was included in error.

expiration date from the listing for synthetic methionine on the National List. In effect, removal of the expiration date from the current restrictive annotation provides for the use of synthetic methionine until it is reviewed again by the NOSB as part of either the substance’s next sunset review or through the petition process.⁵

The NOSB also recommended a reduction in the maximum levels of synthetic methionine allowed in organic poultry feed as part of their April 2010 recommendation. In response to this recommendation, this final rule amends the listing for synthetic methionine by reducing the maximum levels of the substance allowed per ton of feed for organic poultry from “laying chickens—4 pounds; broiler chickens—5 pounds; turkeys and all other poultry—6 pounds” to “laying and broiler chickens – 2 pounds; turkeys and all other poultry – 3 pounds”.

Through this final rule, AMS is also correcting the CAS numbers for the forms of synthetic methionine specified on the National List. CAS numbers are numeric identifiers which are used to uniquely identify substances. As discussed in the proposed rule, two of the three CAS numbers in the current listing for synthetic methionine are not appropriately specified in the regulation (77 FR 5719). An overview of the changes is provided in Table 1.

Table 1. Overview of corrections to CAS numbers for allowed forms of synthetic methionine.

CAS #	Substance Name	Is substance name included in current regulations?	Is CAS # included in current regulations?	Are CAS # and substance name included in final rule?
59-51-8	DL-Methionine	yes	yes	yes
348-67-4	D-Methionine	no	yes	no
63-68-3	L-Methionine	no	yes	no
583-91-5	DL-Methionine-hydroxy analog	yes	no	yes

⁵ A petition to change the annotation for methionine was submitted by the Methionine Task Force on April 8, 2011. The petition is retrievable from the NOP Website in the Petitioned Substances Database under “Methionine” at: <http://www.ams.usda.gov/NOPPetitionedSubstancesDatabase>. The NOSB is currently reviewing the petition.

4857-44-7 and 922-50-9	DL-Methionine-hydroxy analog calcium	yes	no	yes
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III. Related Documents.

A notice was published in the Federal Register announcing a meeting of the NOSB and its planned deliberations to address a petition pertaining to the use of methionine in organic poultry production on March 17, 2010 (75 FR 12723).

The current listing for methionine was codified through publication of an interim rule with request for comments in the Federal Register on August 24, 2010 (75 FR 51919), and reaffirmed by a final rule published on March 14, 2011 (76 FR 13501).

The proposal to allow the use of methionine as specified in this final rule was published as a proposed rule on February 6, 2012 (77 FR 5717).

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 the 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 or deletion from the National List. The National List petition process is implemented under section 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 (OMB).

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 final 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 section 6514(b) of the OFPA. States are also preempted under section 6503 through 6507 of the OFPA 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 6507(b)(2) of the OFPA, 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 6519(f) of the OFPA, this final rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601-624), the Poultry Products Inspection Act (21 U.S.C. 451-471), 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. 301-399), nor

the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136-136(y)).

Section 6520 of the OFPA 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 final 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 final rule would not be significant. The effect of this final rule is to continue the allowance of synthetic methionine in poultry production, which would otherwise expire in October 2012. While the rule will reduce the rates of synthetic methionine allowed in organic poultry feed, this action amends the regulations such that small

entities will continue to have access to a substance for use in organic poultry production. AMS concludes that the economic impact of extending the allowance for synthetic methionine in organic poultry production, if any, will be minimal to small agricultural service firms. Accordingly, AMS 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 NOP's Accreditation and International Activities Division, the number of certified U.S. organic crop and livestock operations totaled over 17,000 in 2010. Based on USDA data from the Economic Research Service (ERS) in 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.⁶ 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 2008.⁷ ERS estimated the number of certified organic turkeys raised in the United States in 2008 at 398,531. Based on the USDA data reported by the National Agricultural Statistical Service (NASS), the US market value for organic eggs, and laying and broiler chickens was calculated at

⁶ 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/>.

⁷ Ibid.

\$352,831,850 in 2008.⁸ 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. U.S. sales of organic food and beverages have grown from \$1 billion in 1990 to \$26.7 billion in 2010. Sales in 2010 represented 7.7 percent growth over 2009 sales.⁹

In addition, USDA has 93 accredited certifying agents who provide certification services to producers and handlers under the NOP. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP website, 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 final rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35.

E. Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

F. Comments Received on Proposed Rule NOP-11-11

⁸ U.S. Department of Agriculture, National Agricultural Statistics Service. 2010. The 2007 Census of Agriculture, Organic Production Survey (2008): Volume 3, Special Studies, Part 2, AC-07-SS-2, Tables 10 & 11, pp 69-91. http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Organics/ORGANICS.pdf

⁹ Organic Trade Association. 2011. Organic Industry Survey. www.ota.com.

AMS received 38 comments on the proposed rule. Comments were received from organic livestock producers, consumers, accredited certifying agents, trade associations, non-profit organizations, advocacy groups, and a methionine manufacturer. The majority of comments supported a continued allowance for synthetic methionine in organic poultry production after its current expiration date, October 1, 2012. Nine comments specifically supported the amendment as proposed. Seven of these nine comments further stated their support for the proposed action because it will meet the intent of the NOSB to phase out the use of synthetic methionine in organic poultry production over time. Three commenters opposed the proposed rule as they wanted no synthetic methionine to be included in organic poultry diets.

Changes Requested But Not Made

Many commenters stated that the proposed reduction in the maximum levels of synthetic methionine allowed per ton of feed could pose issues for some organic producers. These commenters described their concerns with the proposed reduction, including the lack of commercially available natural sources of methionine, and considerations pertaining to animal health and welfare and the environment.

Commenters stated that natural alternatives to compensate for the reduction in synthetic methionine are not commercially available at quantities that would meet the nutritional requirements of the birds. Commenters acknowledged that research was ongoing to identify high methionine feeds, but noted that these alternatives are not produced in sufficient quantities to meet the demand of the organic poultry market. Some commenters stated that, in the absence of natural alternatives, synthetic methionine continues to be important for overall production output, increased flock uniformity and reduced feed costs. Some commenters noted that poultry diets are corn and soybean based and suggested that producers may need to meet the nutritional

requirement for methionine by overfeeding protein with extra soybean meal. A commenter questioned if a sufficient quantity of organic soybeans were available for this strategy of overfeeding soybean meal to compensate for reduced synthetic methionine levels. One commenter also suggested that feed costs could rise by 20% if producers opt to overfeed protein sources in response to the reduced levels.

Some commenters cited scientific literature and National Research Council (NRC)¹⁰ recommendations on the quantity of methionine needed in a poultry diet to optimize animal health. The commenters stated that the nutritional requirements for birds change over time with greater methionine demand early in life and early in the laying period, and that the proposed reduction in synthetic methionine would not align with the nutritional demands of the birds during certain life stages. Commenters also referenced the benefits to animal welfare when the nutritional requirement for methionine is met. Commenters noted that diets with inadequate amounts of methionine could lead to increased feather pecking and cannibalism.

Some commenters also raised concerns about the environmental impacts of poultry diets with lower levels of synthetic methionine. These commenters stated that studies show that inclusion of synthetic methionine in poultry diets reduced greenhouse gas production, reduced nitrogen waste and required less land be cultivated to produce the same amount of poultry products as those without methionine supplementation. Other commenters noted that producers may choose to meet the methionine needs of the birds by overfeeding protein. These commenters stated that increased protein in the diet has been shown to lead to more nitrogen excretion and an increase in ammonia levels in poultry houses.

¹⁰ The NRC is a branch of the National Academy of Sciences. The NRC determines the nutritional requirements for livestock species in various phases of production based upon a compilation of scientific studies.

To address these concerns, commenters recommended alternatives to the proposed reduction in the levels of synthetic methionine. Some commenters suggested that the annotation on synthetic methionine should align with the methionine recommendation from the National Research Council. Some commenters stated that the maximum levels of methionine per ton of feed should remain at the levels currently codified (i.e. for laying chickens – 4 pounds; for broiler chickens – 5 pounds; and turkey and all other poultry – 6 pounds). Other commenters suggested that, if the proposed reduction in synthetic methionine levels is finalized at 2 pounds for laying and broiler chickens and at 3 pounds for turkeys and all other poultry, then the annotation should specify that these levels be based upon an average amount of synthetic methionine per ton of feed fed over the life of the birds. These commenters noted that this latter approach would be consistent with the request of the 2011 petition submitted by the Methionine Task Force.

Consistent with the NOSB recommendation, AMS is maintaining the proposed amendment to allow synthetic methionine in organic poultry production after October 1, 2012, at reduced levels. The NOSB received numerous public comments at their April 2010 public meeting regarding the use of synthetic methionine in organic poultry production. During their deliberations, the NOSB also reviewed technical information on synthetic methionine in accordance with the criteria in OFPA (7 U.S.C 6517-6518) and the NOP regulations for synthetic substances on the National List (§ 205.600). As part of their decision making, the NOSB is mandated by OFPA to evaluate whether alternative practices make the use of a substance such as synthetic methionine unnecessary. The NOSB recommended an allowance for lower levels of synthetic methionine based on their perspective that implementing management strategies and different housing practices should lessen or eliminate the need for synthetic methionine in

organic production. The NOSB also believed that a reduction in the levels allowed after October 1, 2012, will stimulate further market development of natural alternatives and drive management changes in the organic poultry industry. Amending the listing for this substance on the National List to allow higher levels of the substance than recommended by the NOSB would not meet the intent of the NOSB to phase out the use of this synthetic methionine in organic poultry production over time. Therefore, consistent with the NOSB recommendation, AMS is codifying the amendment to synthetic methionine through this final rule as proposed.

One commenter suggested that poultry diets without synthetic methionine may not be in compliance with the Association of American Feed Control Officials' Model Feed Bill and Regulations which have been adopted in 18 states. This rule allows for synthetic methionine in organic poultry feed in accordance with its restrictive annotation on the National List. This action is not requiring the formulation of organic poultry feed without synthetic methionine.

Some commenters questioned the process through which the NOSB made its April 2010 recommendation to the NOP. Commenters reiterated that methionine requirements for poultry and the commercial availability of natural sources of methionine have not changed since the NOSB began its deliberations on the allowance for synthetic methionine in organic production. Therefore, commenters questioned, with the same information, the NOSB decision to further restrict the use of synthetic methionine in their April 2010 recommendation. One commenter also stated that the NOSB should have accepted additional public comment at the April 2010 meeting on the reduced levels of the substance in their recommendation prior to voting. One commenter disputed the information provided to the NOSB Livestock Committee by anonymous feed mills and scientific experts about the feed requirements for poultry.

On March 17, 2010, a notice was published in the Federal Register announcing a meeting of the NOSB and its planned deliberations to address a petition pertaining to the use of methionine in organic poultry production (75 FR 12723). In response to this notice, the NOSB accepted both written and oral public comment on this issue in advance of making their recommendation. All comments were considered alongside the technical information as part of the NOSB's recommendation on synthetic methionine to the Secretary.

Two commenters suggested that, if organic poultry were produced using synthetic substances, then the organic poultry products from these poultry should be labeled as produced through use of a synthetic. The NOP regulations authorize the use of synthetic substances that have been recommended by the NOSB and included on the National List by the Secretary. Requiring labeling for the use of synthetic inputs as suggested by the commenters is outside the scope of this rulemaking.

Several commenters provided comments in reference to the petition submitted in 2011 by the Methionine Task Force.¹¹ A few comments regarding the 2011 petition addressed the potential for increased audit times based on upon the petitioner's request and the need for NOSB to consider use of a natural omnivorous diet as an alternative to the petitioner's request. Other comments supported the 2011 petition and urged the NOSB to review it as soon as possible. These comments are outside the scope of this rulemaking. The NOSB is currently reviewing this petition and would accept comments on any NOSB proposal to address this petition as part of a future NOSB meeting.

¹¹ The 2011 petition is available on line at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5090283&acct=nopgeninfo>. This petition requests an allowance for synthetic methionine as follows: the allowed maximum average pounds per ton of 100% synthetic methionine (MET) in the diet over the life of the bird be at the following levels: Laying chickens---2.5 lbs; Broiler chickens – 3 lbs; Turkeys and all other poultry – 3 lbs.

AMS specifically requested comments on proposed corrections to the CAS numbers for the allowed forms of methionine. One comment was received from a trade association on this issue. The commenter stated that correcting the CAS numbers (348-67-4 for D-Methionine and 63-68-3 for L-Methionine) would not impact any poultry feeds currently on the market, but noted that the correction would prevent the addition of D-methionine or L-methionine in future feed formulations. AMS is retaining the corrections as proposed to ensure that the appropriate CAS numbers are reflected in the annotation for synthetic methionine on the National List. Forms of synthetic methionine which are not indicated by their CAS number on the National List at section 205.603 would need to be petitioned for review by the NOSB.

G. General Notice of Public Rulemaking.

This final rule reflects a recommendation submitted to the Secretary by the NOSB for extending the use of synthetic methionine in organic poultry production. The NOSB evaluated this substance using criteria in the OFPA in response to a petition. 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, some allowance for synthetic methionine is a necessary component of a nutritionally adequate diet for organic poultry. 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, 2012, 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:

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 #'s 59-51-8, 583-91-5, 4857-44-7, and 922-50-9)—for use only in organic poultry production at the following maximum levels of synthetic methionine per ton of feed: laying and broiler chickens – 2 pounds; turkeys and all other poultry – 3 pounds.

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Dated: September 13, 2012

David R. Shipman
Administrator
Agricultural Marketing Service

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