

NATIONAL ORGANIC STANDARDS

Remarks prepared for
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Hard work and the democratic process have paid off. The new proposed organic standards rule, published in the Federal Register on March 13, benefitted greatly from all the hard work of the USDA staff and from the thousands of comments we received from the organic industry and consumers. Not only is the new proposal a significant improvement, but we will also all benefit from a much more educated consuming public. And consumers are not just educated about the "Big 3" or the other highly visible public issues, but have come away with a deeper understanding about what "organic" really means.

This is a big – no, a massive – rule. We worked hard to get it right, and think we've done a pretty good job. But we know it's not perfect. That is why we have again provided for a 90 day public comment period, so that we can benefit from the same kind of close scrutiny that we had before.

We have already begun to get comments. As of March 21, we had 23,744 hits on our web site and received 175 public comments via email.

Given that the public comment period started just last week, I would like to take this opportunity to outline some of the issues that we know will be of interest, in hopes that it will help to stimulate a constructive public dialogue.

"Genetic" Drift

One issue that has already been raised is that of drift of prohibited substances onto organic farms, particularly drift from the products of genetic engineering, or "excluded methods."

Drift has been a difficult issue in the organic community from the beginning. Organic operations have always had to worry about the potential for drift from neighboring operations that use conventional farming practices. As the number of organic farms increases, so does the potential for conflict between organic and conventional operations.

In most certification programs, these issues are addressed through the organic system plan. It has always been the responsibility of organic operations to manage potential contact with prohibited substances, whether from the non-organic portions of a mixed operation or from neighboring farms. The organic plan must outline the steps that an organic operation will take to avoid unintentional contamination with prohibited substances.

When we are considering drift issues, it is particularly important to remember that organic standards are process based. Certifying agents attest to the ability of organic operations to follow a set of production standards and practices that meet the requirements of OFPA and the regulations. The presence of a detectable residue of a prohibited substance alone does not necessarily constitute a violation of those standards.

I realize that concerns about so-called “genetic drift,” primarily pollen drift from genetically engineered crop varieties, have highlighted the overall drift issue. Organic farmers are concerned that pollen drifting from a near-by farm will contaminate their crops, and that they may lose the premium for their organic product through no fault of their own. Just as with any other prohibited substance, as long as a farmer takes reasonable steps to avoid contamination as detailed in their organic system plan, this kind of inadvertent, incidental contamination should not affect the status of an organic product or operation.

We recognize that some may find this answer not entirely satisfying – that in the end it doesn’t seem quite fair that organic farmers should have the burden of preventing drift from other farms. Many have already argued that we should use this rule to somehow shift the burden to the technology providers and the conventional operations that use their products. The kind of remedies that have been suggested, however, are outside the scope of OFPA and this regulation.

For example, some have suggested that this regulation should require that conventional farming operations using genetically engineered varieties plant buffer strips or take other steps to avoid drift onto organic farms. While there may be some interest in these kinds of requirements at the State level, the OFPA only provides for regulation of organic operations. We cannot use this regulation to impose planting requirements on farms that are not covered by the underlying law.

Similarly, others have suggested that the regulation could provide for citizen’s rights to sue in cases of contamination through drift. Private citizens already have rights to sue under some State tort laws. For example, suits have been brought under State nuisance laws seeking to recover damages from synthetic chemical pesticide drift. To provide for a specific right to sue as a Federal cause of action here, however, would require a change in the law. Nothing in the OFPA provides for that kind of right, and we could not grant it through regulation.

Issues of pollen drift, however, are not confined solely to the world of organic agriculture. Concerns about the potential impacts of the use of Bt corn hybrids, for example, recently led to new restrictions on the planting of such crops. New requirements are designed to help mitigate the potential impacts of Bt hybrids on other operations, including organic and sustainable farms that depend on foliar Bt applications as an important pest control tool.

The conventional agriculture marketplace is also beginning to differentiate GMO and non-GMO products in a limited way. Conventional farmers who chose to plant non-GMO varieties, either to satisfy particular contract conditions or simply out of choice, are also facing the same kinds of questions about incidental contamination that organic farmers face. Given the growing interest in these issues throughout the food and agriculture sector, it is clear that this proposed regulation will not be the last word on these issues.

PDP Mean

Issues of drift and unintentional contamination are not limited to concerns about genetically engineered crop varieties. Drift of synthetic chemical pesticides has been of historical concern as well. This proposal would establish a new kind of “bench mark” for assessing levels of pesticide contamination. The concept – that we should establish some sort of action level or threshold for pesticide residues – is not new. But because we are proposing a new measure, I thought it would be useful to describe what it is and our thinking behind it.

We are proposing to use the national mean of pesticide residue detections calculated from residue testing in the Pesticide Data Program (PDP). PDP is the premier national pesticide residue testing program. It provides statistically reliable data on pesticide residues for a number of chemical/commodity pairs, focusing particularly on those foods most heavily consumed by infants and children. The results of this testing are used by the Environmental Protection Agency in their dietary risk assessments.

The “national mean” is the average of the pesticide residues detected for a given commodity/chemical pair. We have chosen this benchmark for a number of reasons. First of all, we know that the PDP data are statistically valid and provide a highly reliable picture of real world pesticide residues. Second, because these residue detections are the result of pesticide use, we know that residue levels that fall above the mean are unlikely to be the result of drift or some other unintentional contamination. In other words, residue levels that fall above the average value found after pesticide use just simply should not be considered acceptable in an organic production system.

Some commenters on the first proposal recommended that we use a percentage of the EPA tolerance, for example 5%, as our benchmark. While this is a relatively straightforward approach, we were concerned that it is essentially a randomly chosen value and may, in fact, be too high in many cases. We have compared PDP mean values to 5% of EPA tolerance for a number of chemicals. While there are a very limited number of cases where the PDP mean value is slightly higher than 5% of the EPA tolerance, in the vast majority of cases the PDP mean value is significantly lower.

For example, the PDP mean for Captan on apples is about 45 times lower than 5% of the EPA tolerance (0.47 ppm vs. 1.25 ppm). Similarly, the PDP mean for Malathion on soybean grain is about 65 times lower than 5% of the EPA tolerance (0.006 ppm vs. 0.4 ppm). Electronic copies of published annual summaries and database files can be found on AMS’ web site at: <http://www.ams.usda.gov/science/pdp>.

Fees/Impacts on Small Businesses

Pesticide residue testing also brings up another issue, concerns about testing costs specifically and the implications of this proposal for small businesses in general.

With regard to pesticide residue testing, those costs will be borne by the certifying agent. We realize that those costs will ultimately be factored into the overall costs of certification. Some have suggested that the cost and responsibility of residue testing be assumed by the Federal government. I have to tell you, we simply do not have the funds for a large scale, national

residue testing program of this sort.

We also realize that, to the extent the testing requirements in our proposal add to costs of certification, the impacts could be more significant on smaller organic operations. This is true of other costs as well. A federal regulatory program invariably brings with it some costs. We know that organic farms are predominantly small businesses and we believe that organic farming may give those small agricultural operations a chance to bring home a greater percentage of the consumer dollar. We have, as a result, worked hard throughout the development of this proposal to mitigate the potential impacts on small businesses wherever possible.

For example, operations bringing in less than \$5,000 annually in organic sales would be exempt from the certification requirements. This represents a significant savings to the smallest producers. We have also asked for comment on how products from these small operations should be labeled in certain processed products. Specifically - should the products of an exempt operation be labeled as organic ingredients in processed products with less than 50% organic content. We understand that the benefits of the exemption could be mitigated by labeling restrictions, and we have specifically asked for public comment on this issue.

The rule also eliminated all direct USDA fees to farmers and handlers. We argued, and won, that part of the cost of this program should be covered by appropriated funds and not, as is the case with most other AMS programs, fully recovered through user fees.

The only fees charged by USDA would be for accreditation of certifying agents. Those fees will primarily be based on the actual costs of the accreditation work done by USDA staff so that certifying agents with smaller and less complex programs would pay lower fees. The proposal also provides for a significant reduction in the accreditation fees during the first 18 months of the program, with the balance of the actual costs of accreditation work covered through appropriated funds. Because this is a new program and the accreditation costs during the early implementation phase will depend in part on how quickly USDA is able to get the program up to full speed, we argued that the organic industry should not have to bear the full costs through user fees.

USDA efforts to enhance small organic business opportunities are not limited to provisions of the rule alone. At the same time the proposed rule was released, Secretary Glickman also announced a number of other initiatives aimed at helping the organic industry. The President's budget request for fiscal year 2001 asks for \$5 million for organic research, marketing and education projects in USDA's Sustainable Research and Education Program (SARE). The Agricultural Marketing Service is also entering into a cooperative agreement with the University of California at Davis and the Organic Research Foundation to research organic production and marketing under the USDA marketing order system. Much needed organic market information would come from the fiscal year 2001 request for funds to begin collecting and reporting data on volume and prices of organically grown fruits and vegetables through AMS' Market News Service. And finally, USDA's Risk Management Agency is developing a crop insurance pilot project which would pave the way for organic farmers to get full insurance coverage, providing much needed protection, particularly for smaller producers who are the least able to absorb significant losses in a given year.

We know that small businesses are the heart of the organic industry. We are actively seeking creative suggestions that will further improve our efforts to help small organic farmers and handlers.

Budget

This last discussion highlights the importance of the NOP budget. This proposal is predicated in part on the idea that Congress will appropriate money to offset the costs of accreditation in the early implementation phase. The President's budget proposal for fiscal year 2001, for example, contains a \$639,000 one time item to offset the first round of accreditation.

If these funds are not appropriated, we would have to recover the full costs of accreditation through fees to certifying agents. And we recognize that those costs would ultimately be passed on to certified organic farmers and handlers.

We could potentially make that change in the final rule if it were necessary, although a change of that magnitude would undoubtedly raise deep concerns within the industry. Alternatively, it may be necessary to repropose the fees portions of the rule to give effected parties a chance to comment on the proposal and its potential impacts on the organic industry. It is clear that such a course of action would delay the final rule even further.