

USDA Proposed Rule - What are some issues of concern?

Compiled by James A. Riddle, Organic Independents/Organicworks!
 Rt. 3 Box 162C, Winona, MN, 55987, Ph/fax: 507-454-8310.
 Released March 20, 2000.

Despite major improvements in the proposed rule, there are a number of issues of concern, where comments are needed to create a National Organic Program which meets the needs and expectations of organic farmers and consumers. Among them are the following:

1. Subpart A - Definitions. Does not provide a definition of "organic agriculture," or contain a statement of "Principles of Organic Production." Definition of "system of organic production and handling" is inadequate.
2. Subpart A - Definitions. Genetically Manipulated Organisms (GMO's) are defined by a new term "excluded methods" - see preamble discussion. "Excluded methods" needs to cover products and derivatives of GMO's, and needs to be directly linked to the definition of "prohibited substances."
3. Subpart A - Definitions. Terms defined, including "audit trail," "buffer zone," "compost," "fertilizer," and "inert ingredient," need to be carefully assessed for accuracy and applicability.
4. Subpart B - Applicability. No transitional labels are defined or recognized.
5. Subpart B - Applicability. 205.101(a)(1). The \$5000 small farm exemption, which under OFPA applied to total farm sales, is extended to include "organic sales" and handling sales.
6. Subpart B - Applicability. 205.101(b)(1). Brokers, distributors, warehousemen, and transporters are exempt from certification.
7. Subpart B - Applicability. 205.101(b)(2). Retail operations, including those with delicatessens, salad bars, bakeries, and juice bars, are exempt from certification.
8. Subpart B - Applicability. No oversight or certification is required for operations using the word "organic" in the ingredient list only. (<50% organic ingredients.)
9. Subpart C - Production and Handling. 205.202. Split operations, including those with parallel production, are allowed with no restrictions or additional considerations.
10. Subpart C - Production and Handling. 205.203(c)(1). No restrictions on the quality, quantity, or potential contaminants in manure from "factory farms" or industrial agriculture operations. (contrary to Codex and EU requirements.)
11. Subpart C - Production and Handling. 205.203(c)(3). Requires compost to be produced in compliance with NRCS compost practice standard code 317, which may be inappropriate, unreasonable, and inadvertently prohibit vermicomposting.
12. Subpart C - Production and Handling. 205.203(d)(2). Allows use of Chilean nitrate and potassium chloride. (contrary to EU requirements.)

13. Subpart C - Production and Handling. 205.204(a)(2). Seed treatments are only allowed if they are on the National List, yet none are listed; meaning that the use of treated seeds will be prohibited.
14. Subpart C - Production and Handling. 205.236(a)(2). Contains no allowance for new herd dairy clause, seriously inhibiting the ability of small dairy farms to convert to organic production.
15. Subpart C - Production and Handling. 205.238(b)(1). Breeder stock could receive parasiticides while lactating.
16. Subpart C - Production and Handling. 205.238(c)(1). Antibiotics are prohibited, but antibiotics in vaccines and semen are not addressed.
17. Subpart C - Production and Handling. Stocking rates and space requirements per animal are not addressed. Buffers for pastures are not addressed.
18. Subpart C - Production and Handling. Concept of "commercially available" is applied to organic seeds only - not applied to minor ingredients, processing aids, or livestock inputs.
19. Subpart D - Labeling. Products with <50% organic ingredients could contain non-organic ingredients from "excluded methods" or produced using prohibited materials.
20. Subpart D - Labeling. 205.203. Does not address use of the word "organic" as a modifier in a product name when the ingredient modified is not organic - e.g. "organic cherry sweets", where the cherry is a natural flavor, but not an organic ingredient.
21. Subpart D - Labeling. 205.301. Product composition. Requires that non-organic ingredients must not contain or be created using excluded methods, sewage sludge, or ionizing radiation. This places new burdens on manufacturers, inspectors, and certifying agents.
22. Subpart D - Labeling. 205.310. Design of seal "USDA Certified Organic" implies certification by USDA, which may violate ISO Guide 61, section 2.4.2, which prohibits the accreditation body's mark from being used to imply certification. Should be changed to "Certified Organic USDA Accredited."
23. Subpart F - Accreditation. 205.500(c). Foreign equivalency deals only government to government - no provisions are made for recognition of certifiers not under a government program or accredited by the USDA.
24. Subpart F - Accreditation. 205.501 (a)(11). Measures conflict of interest on a 12 month period. The commonly accepted organic industry standard for conflict of interest is a 24 month period.
25. Subpart F - Accreditation. 205.501(a)(12). New section needs to be inserted requiring certifying agents to provide certification services to all applicants who comply with USDA regulations. Language also needed requiring certifying agents to provide non-discriminatory services.
26. Subpart F - Accreditation. 205.501(a)(12). Requires certifier to accept the certification decisions of all other USDA-accredited certifiers
27. Subpart F - Accreditation. 205.501(b)(2). Needs to integrate allowance for "contract specifications" in order for certifying agents to be able to maintain and control their licensed trademarks.

28. Subpart F - Accreditation. 205.209. Peer review is weak - peer review "may" be used; reviewers act as individuals; reviewers are prohibited from being compensated.
29. Subpart F - Accreditation. 205.510(c)(1). Evaluation of certifying agents occurs once every five years - may not be compliant with international norms. (ISO Guide 61, section 3.5.1.)
30. Subpart F - Accreditation. 205.501(c)(2). An accredited certifier must provide "reasonable security" to the USDA. This amount is unspecified and its affordability is of concern.
31. Subpart F - Accreditation. 205.508(b). "An initial site evaluation of an accreditation applicant shall be conducted before or within a reasonable period of time after issuance of the applicant's 'notification of accreditation.'" The practice of conducting the site visit after accrediting a certifying agent may violate ISO Guide 61, section 2.3.1.
32. Subpart G - Administrative. National List. Does not contain NOSB criteria to evaluate materials. Should be inserted per each National List section or at 205.607, "Amending the National List."
33. Subpart G - Administrative. State Programs. 205.620. Confuses "State organic certification programs" and "State organic programs." e.g.: States can have additional requirements, and take enforcement actions, without establishing certification programs - this is not clear in the text.
34. Subpart G - Administrative. Compliance. 205.660. Does not address investigation of non-certified operations making "organic" claims.
35. Subpart G - Administrative. Compliance. 205.662(e). No penalties are assigned other than suspension and de-certification.
36. Subpart G - Administrative. Compliance. Funding for investigation and enforcement action is not addressed.
37. Subpart G - Administrative. Inspection and Testing. 205.670(b) states that residue tests must be conducted at the certifier's "own expense".
38. Subpart G - Administrative. Inspection and Testing. 205.671 sets maximum allowable residue levels at "estimated national mean" without providing information on what those levels are.
39. Subpart G - Administrative. Inspection and Testing. Provides no protection of organic producers from chemical or genetic trespass; liability for damages is not addressed.
40. Subpart G - Administrative. Inspection and Testing. Does not set or propose any rejection levels for GMO contamination.