

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : June 6, 1990

TO : CAROL MILLIGAN
Planning Division
Department of Agriculture

FROM : CHARLENE HATCHER CH
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE : 296-9422

SUBJECT : In the Matter of the Adopted Permanent Rules Relating to Organic Certification

The above-referenced rule has been approved as to its legality by the Attorney General on June 4, 1990.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard please contact me.

CH/rlb
Enclosures
cc: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "
Paul Strandberg " "

Rule #1696
CH

RULE REVIEW CHECKLIST
RESUBMITTED RULE

File No. 1696 Docket No. 05-0009, 0986

RESUBMISSION DATE 5-21-90
DATE DUE 6-4-90

APPROVED 6-4-90
DISAPPROVED
WITHDRAWM

ADOPTED W/O HEARING ✓
EMERGENCY RULE
To Revisor 5-21-90
REVISOR APPROVED
REVISOR DISAPPROVED
FILED W/SEC. STATE 6-6-90
RETURNED TO AGENCY 6-6-90

____ **Does the revision raise significant new legal issues?**

____ Review date

✓ Rule as adopted (4 copies)

✓ Supplemental Findings of Fact, Conclusions & Order Adopting

____ Board's Supplemental Resolution Adopting

____ Notice of submission to Attorney General

____ Affidavit of Mailing Notice to Attorney General

Department : AGRICULTURE

STATE OF MINNESOTA

Office Memorandum

Rec'd 5-21-90

Date : May 18, 1990

To : Patty Nolte
Attorney General's Office

From : Carol Milligan CM
Planning Division

Phone : 296-6906

Subject : **Resubmission of Proposed Rule Governing Organic Certification**

The Department of Agriculture withdrew the above-mentioned rule from review by the Attorney General on 5/9/90. In accordance with M.R. part 2010.1300, we are now resubmitting the rule and have enclosed the necessary documents to do so.

Please contact me if you have any questions.

cc: Jim Nichols, Commissioner
Paul Strandberg, Special Assistant Attorney General
Gerald Heil, Planning Division
Gail Ryan, Planning Division
Ching Eikenberry, Marketing Division

LAND OF QUALITY FOODS

90 WEST PLATO BOULEVARD
SAINT PAUL, MINNESOTA 55107

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

FAX # 612/296-6890

DATE: 6/4

TO: Charene Hatches

FAX #: 297-2576

NUMBER OF PAGES (Including this cover page) 2

FROM: Carol Milligan 612/297-2301

Dept. of Ag 6-6906

MESSAGE:

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of the Rule of the State Department of Agriculture Governing Organic Certification

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

The above-entitled rule was withdrawn from rule review by the Attorney General on May 9, 1990.

The rule was modified and based on the comments and evidence in the record before the department, I find the following:

M. R.1556.0115

This part was amended to clarify that certification will be revoked whenever a certified party is found in violation of the statutes or rules governing organic food. This change does not constitute substantial change because 1) no new classes of people are affected by the rule since the change; 2) new subject matter is not introduced, but current subject matter is clarified; and 3) it does not change the effect of the rule but ensures consistent application of the rule.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as the rule governing organic certification as modified is adopted this 4th day of June, 1990, pursuant to authority vested in me by Minnesota Statutes, section 31.95, subdivision 4.

Jim Nichols
Commissioner

AR1556
Organic Certification

CH

RULE REVIEW CHECKLIST
Agriculture Dept.

File No. 1696 Docket No. 05 0009 0986

DATE RECEIVED 4-26-90 ADOPTED W/O HEARING X

REVIEW DATE ~~4-5-90~~ 4-7-90 EMERGENCY RULE

DUE DATE 4-10-90 To Revisor: 4-30-90

REVISOR APPROVED

APPROVED REVISOR DISAPPROVED

DISAPPROVED FILED W/SEC. OF STATE 6-6-90

WITHDRAWN 4-9-90 RETURNED TO AGENCY 6-6-90

✓ Rule as adopted (4 copies)

Notice to Solicit Outside Information/Opinion (if applicable)
- Date published in State Register
- Comments

Petition for Adoption of a Rule (if applicable)

Board's Authorizing Resolution
- Date adopted

✓ Proposed Rule
- ✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
- 31.95 subd 4 Statutory Authority
- NA Small Business Statement
- Expenditure of public money statement
- 2-2-90 Signature

✓ Statement of Need and Reasonableness (if applicable)
- NA Small Business Statement
- Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- Feb 28, 1990 Date 30/25 days before adoption
- ✓ Notice attached indicates is attached
- Copy of rule or summary attached

✓ Publication in State Register
- March 5, 1990 Date 30/25 days before adoption

✓ 180-day deadline from: not mandatory
- NA Effective date of law requiring rule (14.12) (both rules)
- ✓ end of comment period (§ 14.26) (rules without hearing)
- effective date of statutory authority (§ 14.29) (emergency rules)

Resolution Adopting
- Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
- April 17, 1990 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney
- Paul Strandberg Name of SAAG representing agency

Notice of Submission to Atty. Gen. (if applicable)

Aff. of Mailing Notice to Atty. Gen. (if applicable)

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of the Rule of the State Department of Agriculture Governing Organic Certification	ORDER OF WITHDRAWL OF A RULE FROM REVIEW BY THE ATTORNEY GENERAL

The above captioned rule is hereby withdrawn from review by the Attorney General this 9th day of May, 1990.

Jim Nichols
Commissioner

Department of Agriculture

Adopted Permanent Rules Relating to Organic Certification

Rules as Adopted

ORGANIC CERTIFICATION

1556.0100 PURPOSE.

Parts 1556.0100 to 1556.0127 are authorized by Minnesota Statutes, section 31.95, subdivision 4. The purpose of parts 1556.0100 to 1556.0127 is to provide a framework for verifying that a product is produced, processed, and distributed in compliance with established Minnesota organic standards, through a process that includes on-site inspection, record keeping, laboratory testing, and an audit trail.

1556.0105 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1556.0100 to 1556.0127.

Subp. 2. **Audit trail.** "Audit trail" means an unbroken chain of documentation that traces the growing, harvesting, handling, and processing history of a product from seed to sale.

Subp. 3. **Certification.** "Certification" means the process by which a certification organization verifies that a producer, processor, or handler meets Minnesota organic food law requirements under Minnesota Statutes, sections 31.92 to 31.94 and parts 1555.0005 to 1555.0013. Compliance must be determined through the use of questionnaires, affidavits, on-site inspections, laboratory tests, record audits, and other procedures.

Subp. 4. **Certification committee.** "Certification committee" means a panel or body consisting of at least three persons appointed by the designated certification organization to review applications for organic certification, oversee the site inspection process, supervise and manage records review and audit trail activities, and grant or reject certification status to applicants. At least one member of the committee must be

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knowledgeable about the product or facility that is to be inspected and certified.

Subp. 5. **Certified organic.** "Certified organic" means a label statement that indicates that a producer, product, or handler meets the requirements of Minnesota Statutes, sections 31.93 and 31.94, and parts 1555.0005 to 1555.0013, and that a designated certification organization or another certification program approved by the commissioner has verified compliance with those standards.

The term "certified" and any derivative of the term "certified" may only be used on a product whose organic production and handling history has been verified by a designated certification organization or by another certifying organization approved by the commissioner that certifies organic products.

Subp. 6. **Department.** "Department" means the Department of Agriculture.

Subp. 7. **Designated certification organization.** "Designated certification organization" means an organization made up of organic food growers, manufacturers, or sellers that has applied to the commissioner of agriculture and been appointed by the commissioner as an official certifying organization.

Subp. 8. **Enterprise.** "Enterprise" means the business and physical facilities of an applicant that are used to produce, process, or handle certified organic products.

Subp. 9. **On-site inspection.** "On-site inspection" means the process whereby a certification inspector visits and inspects the soil, growing conditions, records, and facilities on an applicant's farm, ranch, or property, whether rented or owned by the applicant.

Subp. 10. **Producer.** "Producer" means a person who is responsible for growing or raising organic food.

Subp. 11. **Handler.** "Handler" means a person who sells, transports, stores, purchases, processes, packages, or in any other way handles organically produced agricultural products.

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1556.0107 CERTIFICATION PROCEDURE.

A certification applicant must apply for organic certification for a product or facility on forms provided by the department and available through a designated certification organization. The certification process must be completed no later than 60 days after the producer or handler has been contacted by the designated certification organization to initiate the certification process. If the certification committee determines that an applicant is ineligible for certification, a certified letter stating reasons for ineligibility must be sent to the applicant within ten days of the determination. This decision may be appealed under part 1556.0117.

Certification for producers and handlers must be renewed annually.

1556.0109 CERTIFICATION REQUIREMENTS.

Subpart 1. **Separation of product.** A producer or handler of both organic and nonorganic products on the same farm, ranch, or property shall demonstrate the ability to keep the products separate.

Subp. 2. **Farm certification documentation.** If possible, the certification committee shall certify whole farms. However, individual fields or parts of fields may be certified. Documentation for whole farm or field certification must be in the form of a detailed field history for a minimum of each of the previous three years. The field history for each field must include:

A. field identification, whether owned or leased, size, and crop currently being produced in that field;

B. crop and spray plan for an applicant's nonorganic fields that are adjacent to organic fields;

C. specific crops planted in each field for each of the previous three years;

D. soil building activities used on each organic field;

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E. amount and source of fertilization materials used on each organic field;

F. methods of weed control;

G. pest control problems in the field, during transportation and in storage or processing facilities and what actions were taken to solve the problem; and

H. how crops are harvested, transported, stored, dried, and protected from insects, contamination, and deterioration.

Subp. 3. **On-site inspection.** On-site inspections are required and include physical inspection of the enterprise. The enterprise's records must be reviewed at this time. If necessary, laboratory tests must be ordered. If a second on-site inspection becomes necessary it must be done at the ~~producer~~ producer's or ~~vendor's~~ handler's expense.

The applicant shall sign an affidavit in the presence of a notary or two witnesses attesting to the fact that all of the information supplied to the certification inspector is true and correct at the time of the on-site inspection. The certification committee shall inform the applicant in writing within 60 days of the on-site inspection whether certification status is granted. If status as a certified enterprise is denied, the certification committee shall provide written reasons for the denial by certified letter. This decision may be appealed in accordance with part 1556.0117.

Subp. 4. **Record keeping.** In order to establish an audit trail, record keeping requirements include:

A. field-by-field fertilization, cropping, and pest management histories; lot, bin, or shipment numbers and dates; and an indication of field of origin if a crop is produced on more than one field and, if both organic and nonorganic methods are used to produce, process, or manufacture the same product, records demonstrating that there has been no possibility of commingling of the products;

B. if both certified organic and noncertified products are produced by an applicant, records demonstrating

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that no commingling has occurred during harvest, storage, processing, transportation, packaging, or sale;

C. for livestock, records of all feed rations, including supplements, and their sources. Sources of young stock, if purchased off-farm, breeding, medication, and veterinary care history must be recorded. Any livestock to which necessary medications have been administered must be segregated or otherwise clearly identified. This also applies to animal products produced by or from that stock. There must be no possibility of interchange between certified organic and noncertified organic or conventional livestock products on a farm or in a processing or manufacturing facility; and

D. records of all laboratory analyses performed, including soil tests, plant tissue tests, bacteria counts, and residue tests for toxic contaminants in soil, water, crops, livestock products, or manufactured goods.

Handler's records must be held for three years and include purchase orders, invoices, and inventory, shipping, and processing records. Applicants must provide the designated certification organization with updates and changes in their crop management practices during the time that certification is in effect.

1556.0111 CERTIFICATION INSPECTORS.

All certification inspectors must be impartial and independent, and must meet the following requirements:

A. The inspector may not be a party to a transaction involving the sale or distribution of products of the applicant being inspected.

B. The inspector may not be an employee of, or have any direct financial interest in, a company that is a party to a transaction involving the products of the applicant being inspected.

C. Advice provided by the inspector is limited to helping the applicant meet Minnesota certification standards and improving organic production techniques. Private consultation

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with the inspected applicant for an additional fee at any time within the certification year constitutes grounds not only for dismissing the inspector, but for revoking the applicant's right to certification.

D. The inspector may not have worked for the applicant being inspected in any capacity in the year before the inspection and may not work for the applicant in the two years following the inspection.

1556.0113 TRAINING OF CERTIFICATION INSPECTORS.

Certification inspectors must receive training in organic certification procedures and other related issues from a training course approved by the designated certification organization and the department. Certification inspectors are also required to pass a test approved by the designated certification organization and the department to become an approved certification inspector.

1556.0115 DECERTIFICATION.

Certification may be revoked for violation of Minnesota Statutes, sections 31.92 to 31.94 and parts 1556.0100 to 1556.0127 if sufficient cause is found to revoke certification. The certified producer or ~~vendor~~ handler must be notified by registered mail of the decision and the specific reasons for the revocation. The decision may be appealed in accordance with part 1556.0117.

The department must be notified in writing by the designated certification organization of all certifications and decertifications by the first of each month.

1556.0117 COMPLAINTS AND APPEALS.

Complaints should be directed to the office of the designated certification organization and the organization must be given 30 days to respond to the complaint.

If an applicant wishes to contest a determination made by the designated certification organization a letter of appeal must be filed with the certification committee within ten

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business days of the contested determination.

The burden of proof of injustice rests with the applicant filing the appeal. Requests and notices of appeal must be made in writing and accompanied by supporting documentation. The certification committee has 30 days to make findings on the contested issue. If the applicant filing the appeal feels that undue financial harm will occur due to the length of time taken by the appeal process the applicant may request an expedited hearing. The certification committee has 15 days to respond to the complaint with a written decision and the reasons for it.

If the applicant objects to the certification committee's decision, the applicant may appeal the decision to the Department of Agriculture. The department has 30 days to concur or overturn the certification committee's decision. The department's decision may be appealed under the Minnesota Administrative Procedure Act.

1556.0121 DATA PRIVACY.

In submitting data required by parts 1556.0010 to 1556.0127, the applicant may:

A. clearly mark any portions that, in the applicant's opinion, are trade secrets, commercial, or financial information; and

B. submit the marked material separately from other material.

1556.0123 FAIR LABOR PRACTICES.

An operator of a certified organic enterprise shall comply with applicable federal, state, and local laws concerning minimum wages or other compensation, workers' compensation insurance, working conditions, sanitary facilities, rest periods, safety conditions, housing, and arbitration.

1556.0125 FAIR TRADE PRACTICES.

Fair trade practices require that a certified organic enterprise may not:

A. pass off goods or services as those of another;

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by Revisor _____

B. cause the likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

C. cause the likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by another;

D. use deceptive representations or designations of geographic origin in connection with goods or services;

E. represent that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

F. represent that goods or services are of a particular standard, quality, or grade if they are of another; and

G. disparage the goods, services, or business of another by false or misleading representation of fact.

1556.0127 LABELING.

A product that is labeled ~~Minnesota~~ certified organic or with any derivative of that term must meet ~~Minnesota~~ organic standards contained in parts 1555.0005 to 1555.0013. If a product is labeled "certified organic" or with any derivative of that term the name of the certifying person or organization must be stated on the label.

A handler of certified organic products shall maintain records that allow the product to be traced to its origin and show proof of compliance with the standards indicated on the product's label.

REPEALER. Minnesota Rules, parts 1555.0005, subparts 2 and 13; 1555.0011; and 1555.0013, are repealed.

Approved
by Revisor _____

Department : AGRICULTURE

STATE OF MINNESOTA
Office Memorandum

Date : April 25, 1990

To : Rita Desmond
Attorney General's Office

From : Carol Milligan
Planning Division

Phone : 296-6906

Subject : **Review of Proposed Rule Governing Organic Certification**

The Department of Agriculture adopted the above-mentioned rule pursuant to Minnesota statutes, sections 14.22-14.28. Enclosed with this memo are the documents which are required to be submitted to the Attorney General for review prior to final approval of the rule. A list of the documents is attached for your convenience.

Please contact me if you have any question.

cc: Jim Nichols, Commissioner
Paul Strandberg, Special Assistant Attorney General
Craig Lindeke, Revisor of Statutes' Office
Gerald Heil, Planning Division
Gail Ryan, Planning Division
Ching Eikenberry, Marketing Division

LIST OF ATTACHED DOCUMENTS

A. Rule as Proposed

B. Notice of Intent

C. Statement of Need

D. Affidavit of Mailing

E. Mailing List Certificate

F. *State Register* Photocopy

G. Rule as Adopted (four copies)

H. Findings of Fact

I. Comments

J. Declaration of Counsel

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE
PROPOSED RULE OF THE
DEPARTMENT OF AGRICULTURE
GOVERNING THE CERTIFICATION
OF ORGANIC FOOD
(MINNESOTA RULES PART 1556.0100 -
1556.0127)

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture (MDA) of new rules governing the requirements for the certification of organic food. The rule is proposed for adoption pursuant to Minnesota Statutes, section 31.95 subdivision 4, which authorizes the MDA to adopt rules for the implementation of an organically grown certification program. As provided in Minnesota Statutes, section 31.002, when practicable and consistent with state law, these rules must conform with those promulgated under Federal Law.

The Department has determined that the proposed rule is noncontroversial in nature because it is supported by industry and is in conformity with Federal Regulations. The Food and Drug Administration (FDA) does not now have nor has it ever had specific requirements for certified organic food products. Because of the noncontroversial nature of this rule, the Department directed that the rulemaking proceedings be conducted in accordance with the statutory provisions governing the adoption of noncontroversial rules, Minnesota Statutes, section 14.21 to 14.28. Accordingly, the rulemaking proceedings on the proposed rule are governed by that statute and no hearing will be conducted on the proposed rule unless, twenty-five or more persons submit to the Department a written request for such hearing during the 30 day comment period required by Chapter 14.

In accordance with the requirement of Minnesota Statutes, section 14.23, this Statement of Need and Reasonableness was prepared and completed prior to the date that the proposed rule was published by the State Register.

II. GENERAL OVERVIEW

Minnesota Statutes, Chapter 31, was amended by the 1988 Legislature to include section 31.95. This section provided for the Commissioner of Agriculture to designate one or more Minnesota organizations to certify organically grown seeds, products and food. Minnesota Statutes, 31.95(4) provides that organic certification organizations may draft rules for submission to the Commissioner to adopt for implementation of the organically grown certification program. Minnesota Statutes 31.94 gives the Department rulemaking authority for the clarification of organic food standards and marketing practices. The Organic Growers and Buyers Association, Inc., a designated certification organization, was instrumental in helping the Department draft the proposed certification rules.

III. NEED FOR AND REASONABLENESS OF THE PROPOSED ORGANIC CERTIFICATION RULES

The need for and reasonableness of the proposed organic certification rules are as follows:

Minnesota Rules, parts 1556.0100 to 1556.0127.

1556.0105 Definitions.

This rule is needed to define words used in the following rules which determine how the certification process is to be conducted. Definitions are a reasonable part of any set of rules and help to eliminate misinterpretation of the rule's intent.

1556.0107 Certification Procedure

This rule is needed to set up the application procedure for certification of organic products. It is reasonable because it provides an orderly process for providing certification services to providers of organic products in a timely manner.

1556.0109 Certification Requirements.

This rule is needed to provide the basic requirements an organic producer must meet to be eligible for certification. It is reasonable to require separation of produce to allow for the tracking of products to assure their organic character. It is impossible to determine the difference between organic and non-organic products. On-site inspection of organic enterprises is reasonable because it gives the inspector an opportunity to observe all of the circumstances surrounding the production of an organic product, inspect the records that are kept on-site and obtain a signed affidavit from the certification applicant. The record keeping requirements are reasonable because they provide the basis of a paper trail that traces an organic product from seed to sale and insures its authenticity. These certification requirements are consistent with the requirements of other state and private certification programs and should present no barriers to interstate commerce.

1556.0111 Certification Inspectors

This rule is needed to define the concept of an impartial and independent inspector. Inspectors conduct on-site inspections and are responsible for reviewing records. They determine whether an enterprise meets organic standards and is therefore eligible for organic certification. This rule is reasonable because it provides a basic set of requirements to avoid conflicts or interest on the part of on-site inspectors.

1556.0113 Training of Certification Inspectors

This rule is needed to provide for minimum standards that an inspector must meet in order to become a certification inspector. This rule is reasonable because expertise in the area of organic growing and processing techniques is important in determining a producer's or processor's eligibility for the certification process.

1556.0115 Decertification

This rule is needed to provide for a procedure to decertify enterprises that are in violation of Minnesota organic law and rules. This rule is reasonable because violations of organic law and rules threaten the integrity of the certification system and are a threat to public confidence in the certification process.

1556.0117 Complaints and Appeals

There is a need for an appeal procedure in case mistakes have been made in the certification process. An appeal procedure is reasonable because it allows an inquiry into the facts relating to a certification issue and provides a forum for the settlement of a complaint or problem.

1556.0121 Data Privacy

This rule is needed to provide for protection of trade secrets and financial information producers provide the certifying organization. This rule is reasonable because privacy is important to insure applicant cooperation in obtaining the documents necessary to verify the organic history of products and these documents would not otherwise be made public.

1556.0123 Fair Labor Practices

The effectiveness of a certification system is highly dependent on the voluntary efforts of a producer or processor to abide by not only the organic rules and standards but all of the other rules and laws that impact on the production and processing of organic products. The employees of organic enterprises that are treated fairly are much more likely to preserve and protect the integrity of a product than are employees who are not treated well. Employees of an enterprise are an integral part of the production of an authentically organic product. Therefore it is important and reasonable to require that employees be treated fairly.

1556.0125 Fair Trade Practices

Organic produce is not distinguishable from non-organic produce once it has entered the stream of commerce. The only assurance consumers have that a product is organic is the word of the producer or processor or the certification process. Fair trade practice rules are necessary to protect and preserve public confidence in certified organic produce. This rule is reasonable because it establishes precisely which marketing practices are inimical to public confidence and therefore prohibited.

1556.0127 Labeling

This rule is needed to clarify what the term "certified organic" on a label means. The rule is also needed to establish other label and verification requirements needed in order to use the term on a label. This rule is reasonable because it establishes minimum requirements to insure the integrity of an organic product.

REPEALER: Minnesota Rules, parts 1555.0005, subparts 2 and 13, part 1555.0011, and part 1555.0013 are repealed. Parts 1555.0005, subparts 2 and 13, and part 1555.0011 are superseded by new rules and part 1555.0013 is obsolete.

IV. SMALL BUSINESS IMPACT OF THE PROPOSED RULES

As prescribed by Minnesota Statutes, Section 14.115, subdivisions 1 and 2, the department has considered the degree of impact the proposed rule will have on small businesses and the alternative methods for lessening the impact.

The Department has determined that some persons, processors/manufacturers and retailers of organic food products will be impacted by the implementation of these rules because a fee will be charged for the certification services and documentation and recordkeeping requirements might be increased for some certification applicants. However, certification is voluntary and there are three certifying organizations in the state with varying fee schedules.

Certification is the wave of the future in the organic industry because it is the most reliable way of assuring that a product is organic. There is activity in many other states to implement and enforce organic certification programs. The proposed Minnesota rules are very similar to those existing in other states. These rules require the absolute minimum documentation and compliance requirements necessary to insure the authenticity of an organic product. The rules even provide for on-site inspection of documents to save the certification applicant time and money for postage and duplication. The industry which consists of mostly small businesses was invited to comment on the proposed rules by phone letter or in person. A public meeting was held to allow them to give additional input. The rules were drafted to accommodate their reasonable requests.

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture

Proposed Permanent Rules Relating to Organic Certification

Notice of Intent to Adopt a Rule without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22-14.28. The statutory authority to adopt this rule is *Minnesota Statutes*, section 31.95, subdivision 4.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. If a public hearing is required, the department will proceed according to *Minnesota Statutes*, sections 14.131-14.20.

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

The proposed rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Ms. Milligan.

Many of the firms seeking organic certification meet the definition of a small business in *Minnesota Statutes*, section 14.115. However, certification is voluntary, and this rule will have no impact on any small business not wishing to be certified.

If no hearing is required, upon adoption of the final rule, the rule and the required supporting documents will be submitted to Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule must submit a written request to Ms. Milligan.

Dated: 2 February 1990

Jim Nichols, Commissioner
Department of Agriculture

Rules as Proposed (all new material)

ORGANIC CERTIFICATION

1556.0100 PURPOSE.

Parts 1556.0100 to 1556.0127 are authorized by *Minnesota Statutes*, section 31.95, subdivision 4. The purpose of parts 1556.0100 to 1556.0127 is to provide a framework for verifying that a product is produced, processed, and distributed in compliance with established Minnesota organic standards, through a process that includes on-site inspection, record keeping, laboratory testing, and an audit trail.

1556.0105 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1556.0100 to 1556.0127.

Subp. 2. **Audit trail.** "Audit trail" means an unbroken chain of documentation that traces the growing, harvesting, handling, and processing history of a product from seed to sale.

Subp. 3. **Certification.** "Certification" means the process by which a certification organization verifies that a producer, processor, or handler meets Minnesota organic food law requirements under *Minnesota Statutes*, sections 31.92 to 31.94 and parts 1555.0005 to 1555.0013. Compliance must be determined through the use of questionnaires, affidavits, on-site inspections, laboratory tests, record audits, and other procedures.

Subp. 4. **Certification committee.** "Certification committee" means a panel or body consisting of at least three persons appointed by the designated certification organization to review applications for organic certification, oversee the site inspection process, supervise and manage records review and audit trail activities, and grant or reject certification status to applicants. At least one member of the committee must be knowledgeable about the product or facility that is to be inspected and certified.

Subp. 5. **Certified organic.** "Certified organic" means a label statement that indicates that a producer, product, or handler meets the requirements of *Minnesota Statutes*, sections 31.93 and 31.94, and parts 1555.0005 to 1555.0013, and that a designated certification organization or another certification program approved by the commissioner has verified compliance with those standards.

The term "certified" and any derivative of the term "certified" may only be used on a product whose organic production and handling history has been verified by a designated certification organization or by another certifying organization approved by the commissioner that certifies organic products.

Subp. 6. **Department.** "Department" means the Department of Agriculture.

Subp. 7. **Designated certification organization.** "Designated certification organization" means an organization made up of organic food growers, manufacturers, or sellers that has applied to the commissioner of agriculture and been appointed by the commissioner as an official certifying organization.

Subp. 8. **Enterprise.** "Enterprise" means the business and physical facilities of an applicant that are used to produce, process, or handle certified organic products.

Subp. 9. **On-site inspection.** "On-site inspection" means the process whereby a certification inspector visits and inspects the soil, growing conditions, records, and facilities on an applicant's farm, ranch, or property, whether rented or owned by the applicant.

Subp. 10. **Producer.** "Producer" means a person who is responsible for growing or raising organic food.

Subp. 11. **Handler.** "Handler" means a person who sells, transports, stores, purchases, processes, packages, or in any other way handles organically produced agricultural products.

1556.0107 CERTIFICATION PROCEDURE.

A certification applicant must apply for organic certification for a product or facility on forms provided by the department and available through a designated certification organization. The certification process must be completed no later than 60 days after the producer or handler has been contacted by the designated certification organization to initiate the certification process. If the certification committee determines that an applicant is ineligible for certification, a certified letter stating reasons for ineligibility must be sent to the applicant within ten days of the determination. This decision may be appealed under part 1556.0117.

Certification for producers and handlers must be renewed annually.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

1556.0109 CERTIFICATION REQUIREMENTS.

Subpart 1. **Separation of product.** A producer or handler of both organic and nonorganic products on the same farm, ranch, or property shall demonstrate the ability to keep the products separate.

Subp. 2. **Farm certification documentation.** If possible, the certification committee shall certify whole farms. However, individual fields or parts of fields may be certified. Documentation for whole farm or field certification must be in the form of a detailed field history for a minimum of each of the previous three years. The field history for each field must include:

A. field identification, whether owned or leased, size, and crop currently being produced in that field;

B. crop and spray plan for an applicant's nonorganic fields that are adjacent to organic fields;

C. specific crops planted in each field for each of the previous three years;

D. soil building activities used on each organic field;

E. amount and source of fertilization materials used on each organic field;

F. methods of weed control;

G. pest control problems in the field, during transportation and in storage or processing facilities and what actions were taken to solve the problem; and

H. how crops are harvested, transported, stored, dried, and protected from insects, contamination, and deterioration.

Subp. 3. **On-site inspection.** On-site inspections are required and include physical inspection of the enterprise. The enterprise's records must be reviewed at this time. If necessary, laboratory tests must be ordered. If a second on-site inspection becomes necessary it must be done at the producer or vendor's expense.

The applicant shall sign an affidavit in the presence of a notary or two witnesses attesting to the fact that all of the information supplied to the certification inspector is true and correct at the time of the on-site inspection. The certification committee shall inform the applicant in writing within 60 days of the on-site inspection whether certification status is granted. If status as a certified enterprise is denied, the certification committee shall provide written reasons for the denial by certified letter. This decision may be appealed in accordance with part 1556.0117.

Subp. 4. **Record keeping.** In order to establish an audit trail, record keeping requirements include:

A. field-by-field fertilization, cropping, and pest management histories; lot, bin, or shipment numbers and dates; and an indication of field of origin if a crop is produced on more than one field and, if both organic and nonorganic methods are used to produce, process, or manufacture the same product, records demonstrating that there has been no possibility of commingling of the products;

B. if both certified organic and noncertified products are produced by an applicant, records demonstrating that no commingling has occurred during harvest, storage, processing, transportation, packaging, or sale;

C. for livestock, records of all feed rations, including supplements, and their sources. Sources of young stock, if purchased off-farm, breeding, medication, and veterinary care history must be recorded. Any livestock to which necessary medications have been administered must be segregated or otherwise clearly identified. This also applies to animal products produced by or from that stock. There must be no possibility of interchange between certified organic and noncertified organic or conventional livestock products on a farm or in a processing or manufacturing facility; and

D. records of all laboratory analyses performed, including soil tests, plant tissue tests, bacteria counts, and residue tests for toxic contaminants in soil, water, crops, livestock products, or manufactured goods.

Handler's records must be held for three years and include purchase orders, invoices, and inventory, shipping, and processing records. Applicants must provide the designated certification organization with updates and changes in their crop management practices during the time that certification is in effect.

1556.0111 CERTIFICATION INSPECTORS.

All certification inspectors must be impartial and independent, and must meet the following requirements:

A. The inspector may not be a party to a transaction involving the sale or distribution of products of the applicant being inspected.

B. The inspector may not be an employee of, or have any direct financial interest in, a company that is a party to a transaction involving the products of the applicant being inspected.

C. Advice provided by the inspector is limited to helping the applicant meet Minnesota certification standards and improving

organic production techniques. Private consultation with the inspected applicant for an additional fee at any time within the certification year constitutes grounds not only for dismissing the inspector, but for revoking the applicant's right to certification.

D. The inspector may not have worked for the applicant being inspected in any capacity in the year before the inspection and may not work for the applicant in the two years following the inspection.

1556.0113 TRAINING OF CERTIFICATION INSPECTORS.

Certification inspectors must receive training in organic certification procedures and other related issues from a training course approved by the designated certification organization and the department. Certification inspectors are also required to pass a test approved by the designated certification organization and the department to become an approved certification inspector.

1556.0115 DECERTIFICATION.

Certification may be revoked for violation of *Minnesota Statutes*, sections 31.92 to 31.94 and parts 1556.0100 to 1556.0127 if sufficient cause is found to revoke certification. The certified producer or vendor must be notified by registered mail of the decision and the specific reasons for the revocation. The decision may be appealed in accordance with part 1556.0117.

The department must be notified in writing by the designated certification organization of all certifications and decertifications by the first of each month.

1556.0117 COMPLAINTS AND APPEALS.

Complaints should be directed to the office of the designated certification organization and the organization must be given 30 days to respond to the complaint.

If an applicant wishes to contest a determination made by the designated certification organization a letter of appeal must be filed with the certification committee within ten business days of the contested determination.

The burden of proof of injustice rests with the applicant filing the appeal. Requests and notices of appeal must be made in writing and accompanied by supporting documentation. The certification committee has 30 days to make findings on the contested issue. If the applicant filing the appeal feels that undue financial harm will occur due to the length of time taken by the appeal process the applicant may request an expedited hearing. The certification committee has 15 days to respond to the complaint with a written decision and the reasons for it.

If the applicant objects to the certification committee's decision, the applicant may appeal the decision to the Department of Agriculture. The department has 30 days to concur or overturn the certification committee's decision. The department's decision may be appealed under the Minnesota Administrative Procedure Act.

1556.0121 DATA PRIVACY.

In submitting data required by parts 1556.0010 to 1556.0127, the applicant may:

A. clearly mark any portions that, in the applicant's opinion, are trade secrets, commercial, or financial information; and

B. submit the marked material separately from other material.

1556.0123 FAIR LABOR PRACTICES.

An operator of a certified organic enterprise shall comply with applicable federal, state, and local laws concerning minimum wages or other compensation, workers' compensation insurance, working conditions, sanitary facilities, rest periods, safety conditions, housing, and arbitration.

1556.0125 FAIR TRADE PRACTICES.

Fair trade practices require that a certified organic enterprise may not:

A. pass off goods or services as those of another;

B. cause the likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

C. cause the likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by another;

D. use deceptive representations or designations of geographic origin in connection with goods or services;

E. represent that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

F. represent that goods or services are of a particular standard, quality, or grade if they are of another; and

G. disparage the goods, services, or business of another by false or misleading representation of fact.

1556.0127 LABELING.

A product that is labeled Minnesota certified organic or with any derivative of that term must meet Minnesota organic standards contained in parts 1555.0005 to 1555.0013. If a product is labeled "certified organic" or with any derivative of that term the name of the certifying person or organization must be stated on the label.

A handler of certified organic products shall maintain records that allow the product to be traced to its origin and show proof of compliance with the standards indicated on the product's label.

REPEALER. *Minnesota Rules*, parts 1555.0005, subparts 2 and 13; 1555.0011; and 1555.0013, are repealed.

Department of Revenue

Proposed Permanent Rules Relating to Single Return Filing by Affiliated Corporations

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Revenue intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes* sections 290.52 and 290.37, subdivision 1(a).

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Stephen E. Krenkel, Attorney
Business Tax Unit
Appeals and Legal Services Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-3438

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Stephen E. Krenkel upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of

Department of Agriculture

Food Inspection Division

In the Matter of the Proposed Adoption of the Rule of the State Department of Agriculture Governing Organic Certification

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22-14.28. The statutory authority to adopt this rule is Minnesota Statutes, section 31.95, subdivision 4.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. If a public hearing is required, the department will proceed according to Minnesota Statutes, sections 14.131-14.20.

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

(8) The proposed rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed rule as noticed.

(11) A copy of the proposed rule is attached to this notice.

(13) A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Ms. Milligan.

(14) Many of the firms seeking organic certification meet the definition of a small business in Minnesota Statutes, section 14.115. However, certification is voluntary, and this rule will have no impact on any small business not wishing to be certified

(9) If no hearing is required, upon adoption of the final rule, the rule and the required supporting documents will be submitted to Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule must submit a written request to Ms. Milligan.

STATE OF MINNESOTA

2/2/90
Date

Jim Nichols
Jim Nichols, Commissioner
Department of Agriculture

Department of Agriculture

Proposed Permanent Rules Relating to Organic Certification

Rules as Proposed (all new material)

ORGANIC CERTIFICATION

1556.0100 PURPOSE.

Parts 1556.0100 to 1556.0127 are authorized by Minnesota Statutes, section 31.95, subdivision 4. The purpose of parts 1556.0100 to 1556.0127 is to provide a framework for verifying that a product is produced, processed, and distributed in compliance with established Minnesota organic standards, through a process that includes on-site inspection, record keeping, laboratory testing, and an audit trail.

1556.0105 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1556.0100 to 1556.0127.

Subp. 2. **Audit trail.** "Audit trail" means an unbroken chain of documentation that traces the growing, harvesting, handling, and processing history of a product from seed to sale.

Subp. 3. **Certification.** "Certification" means the process by which a certification organization verifies that a producer, processor, or handler meets Minnesota organic food law requirements under Minnesota Statutes, sections 31.92 to 31.94 and parts 1555.0005 to 1555.0013. Compliance must be determined through the use of questionnaires, affidavits, on-site inspections, laboratory tests, record audits, and other procedures.

Subp. 4. **Certification committee.** "Certification committee" means a panel or body consisting of at least three persons appointed by the designated certification organization to review applications for organic certification, oversee the site inspection process, supervise and manage records review and audit trail activities, and grant or reject certification status to applicants. At least one member of the committee must be

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knowledgeable about the product or facility that is to be inspected and certified.

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The term "certified" and any derivative of the term "certified" may only be used on a product whose organic production and handling history has been verified by a designated certification organization or by another certifying organization approved by the commissioner that certifies organic products.

Subp. 6. **Department.** "Department" means the Department of Agriculture.

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Subp. 9. **On-site inspection.** "On-site inspection" means the process whereby a certification inspector visits and inspects the soil, growing conditions, records, and facilities on an applicant's farm, ranch, or property, whether rented or owned by the applicant.

Subp. 10. **Producer.** "Producer" means a person who is responsible for growing or raising organic food.

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1556.0107 CERTIFICATION PROCEDURE.

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Certification for producers and handlers must be renewed annually.

1556.0109 CERTIFICATION REQUIREMENTS.

Subpart 1. **Separation of product.** A producer or handler of both organic and nonorganic products on the same farm, ranch, or property shall demonstrate the ability to keep the products separate.

Subp. 2. **Farm certification documentation.** If possible, the certification committee shall certify whole farms. However, individual fields or parts of fields may be certified. Documentation for whole farm or field certification must be in the form of a detailed field history for a minimum of each of the previous three years. The field history for each field must include:

A. field identification, whether owned or leased, size, and crop currently being produced in that field;

B. crop and spray plan for an applicant's nonorganic fields that are adjacent to organic fields;

C. specific crops planted in each field for each of the previous three years;

D. soil building activities used on each organic field;

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E. amount and source of fertilization materials used on each organic field;

F. methods of weed control;

G. pest control problems in the field, during transportation and in storage or processing facilities and what actions were taken to solve the problem; and

H. how crops are harvested, transported, stored, dried, and protected from insects, contamination, and deterioration.

Subp. 3. **On-site inspection.** On-site inspections are required and include physical inspection of the enterprise. The enterprise's records must be reviewed at this time. If necessary, laboratory tests must be ordered. If a second on-site inspection becomes necessary it must be done at the producer or vendor's expense.

The applicant shall sign an affidavit in the presence of a notary or two witnesses attesting to the fact that all of the information supplied to the certification inspector is true and correct at the time of the on-site inspection. The certification committee shall inform the applicant in writing within 60 days of the on-site inspection whether certification status is granted. If status as a certified enterprise is denied, the certification committee shall provide written reasons for the denial by certified letter. This decision may be appealed in accordance with part 1556.0117.

Subp. 4. **Record keeping.** In order to establish an audit trail, record keeping requirements include:

A. field-by-field fertilization, cropping, and pest management histories; lot, bin, or shipment numbers and dates; and an indication of field of origin if a crop is produced on more than one field and, if both organic and nonorganic methods are used to produce, process, or manufacture the same product, records demonstrating that there has been no possibility of commingling of the products;

B. if both certified organic and noncertified products are produced by an applicant, records demonstrating

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that no commingling has occurred during harvest, storage, processing, transportation, packaging, or sale;

C. for livestock, records of all feed rations, including supplements, and their sources. Sources of young stock, if purchased off-farm, breeding, medication, and veterinary care history must be recorded. Any livestock to which necessary medications have been administered must be segregated or otherwise clearly identified. This also applies to animal products produced by or from that stock. There must be no possibility of interchange between certified organic and noncertified organic or conventional livestock products on a farm or in a processing or manufacturing facility; and

D. records of all laboratory analyses performed, including soil tests, plant tissue tests, bacteria counts, and residue tests for toxic contaminants in soil, water, crops, livestock products, or manufactured goods.

Handler's records must be held for three years and include purchase orders, invoices, and inventory, shipping, and processing records. Applicants must provide the designated certification organization with updates and changes in their crop management practices during the time that certification is in effect.

1556.0111 CERTIFICATION INSPECTORS.

All certification inspectors must be impartial and independent, and must meet the following requirements:

A. The inspector may not be a party to a transaction involving the sale or distribution of products of the applicant being inspected.

B. The inspector may not be an employee of, or have any direct financial interest in, a company that is a party to a transaction involving the products of the applicant being inspected.

C. Advice provided by the inspector is limited to helping the applicant meet Minnesota certification standards and improving organic production techniques. Private consultation

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with the inspected applicant for an additional fee at any time within the certification year constitutes grounds not only for dismissing the inspector, but for revoking the applicant's right to certification.

D. The inspector may not have worked for the applicant being inspected in any capacity in the year before the inspection and may not work for the applicant in the two years following the inspection.

1556.0113 TRAINING OF CERTIFICATION INSPECTORS.

Certification inspectors must receive training in organic certification procedures and other related issues from a training course approved by the designated certification organization and the department. Certification inspectors are also required to pass a test approved by the designated certification organization and the department to become an approved certification inspector.

1556.0115 DECERTIFICATION.

Certification may be revoked for violation of Minnesota Statutes, sections 31.92 to 31.94 and parts 1556.0100 to 1556.0127 if sufficient cause is found to revoke certification. The certified producer or vendor must be notified by registered mail of the decision and the specific reasons for the revocation. The decision may be appealed in accordance with part 1556.0117.

The department must be notified in writing by the designated certification organization of all certifications and decertifications by the first of each month.

1556.0117 COMPLAINTS AND APPEALS.

Complaints should be directed to the office of the designated certification organization and the organization must be given 30 days to respond to the complaint.

If an applicant wishes to contest a determination made by the designated certification organization a letter of appeal must be filed with the certification committee within ten

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business days of the contested determination.

The burden of proof of injustice rests with the applicant filing the appeal. Requests and notices of appeal must be made in writing and accompanied by supporting documentation. The certification committee has 30 days to make findings on the contested issue. If the applicant filing the appeal feels that undue financial harm will occur due to the length of time taken by the appeal process the applicant may request an expedited hearing. The certification committee has 15 days to respond to the complaint with a written decision and the reasons for it.

If the applicant objects to the certification committee's decision, the applicant may appeal the decision to the Department of Agriculture. The department has 30 days to concur or overturn the certification committee's decision. The department's decision may be appealed under the Minnesota Administrative Procedure Act.

1556.0121 DATA PRIVACY.

In submitting data required by parts 1556.0010 to 1556.0127, the applicant may:

A. clearly mark any portions that, in the applicant's opinion, are trade secrets, commercial, or financial information; and

B. submit the marked material separately from other material.

1556.0123 FAIR LABOR PRACTICES.

An operator of a certified organic enterprise shall comply with applicable federal, state, and local laws concerning minimum wages or other compensation, workers' compensation insurance, working conditions, sanitary facilities, rest periods, safety conditions, housing, and arbitration.

1556.0125 FAIR TRADE PRACTICES.

Fair trade practices require that a certified organic enterprise may not:

A. pass off goods or services as those of another;

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B. cause the likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

C. cause the likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by another;

D. use deceptive representations or designations of geographic origin in connection with goods or services;

E. represent that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

F. represent that goods or services are of a particular standard, quality, or grade if they are of another; and

G. disparage the goods, services, or business of another by false or misleading representation of fact.

1556.0127 LABELING.

A product that is labeled Minnesota certified organic or with any derivative of that term must meet Minnesota organic standards contained in parts 1555.0005 to 1555.0013. If a product is labeled "certified organic" or with any derivative of that term the name of the certifying person or organization must be stated on the label.

A handler of certified organic products shall maintain records that allow the product to be traced to its origin and show proof of compliance with the standards indicated on the product's label.

REPEALER. Minnesota Rules, parts 1555.0005, subparts 2 and 13; 1555.0011; and 1555.0013, are repealed.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Organic Certification

AGENCY: Department of Agriculture

MINNESOTA RULES: Chapter 1556

The attached rules are approved for publication in the State Register

Craig E. Lindeke
Senior Assistant Revisor

31.95 sub 4 Stat Authority

The commissioner shall designate.

subd 4 The organic certification organization may draft rules for submission to the commissioner to adopt for implementation of the organically grown certificate program.

Changes minor

Rules
1556.0115 Decertification
if sufficient cause - vague
what's the criteria for decertification

1556.0121
just because they mark it secret will the agency keep it secret - shouldn't reference be made to Data Practices

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of the Rule of the State Department of Agriculture Governing Organic Certification

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the *State Register* on March 5, 1990, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on February 28, 1990. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the *State Register* and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after the notice of proposed rulemaking. The department received one request for a public hearing. (5) Therefore, the department did not receive request for a public hearing from 25 or more persons which were not withdrawn.

(7) No requests for notice of submission to the attorney general were received by the department.

(6) Based on the comments and evidence in the record before the department, I find the following:

M. R.1556.0109, subp. 3

The term vendor was changed to handler to make it consistent with the rest of the rule and the rule's definitions.

M. R. 1556.0127

The term "Minnesota" was deleted from this part because all food labeled as "certified organic" must meet the states organic standards regardless of whether or not the term Minnesota is included in the statement. The term was deleted to avoid confusion.

(8) The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as the rule governing organic certification as modified is adopted this 17th day of April, 1990, pursuant to authority vested in me by Minnesota Statutes, section 31.95, subdivision 4. (9)

Jim Nichols

Jim Nichols
Commissioner

In the Matter of the Adoption of the Rule of the State Department Agriculture Governing Organic Certification

DECLARATION OF COUNSEL

I, Paul Strandberg, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0986.

Paul Strandberg
Special Assistant Attorney General

Dated: 4/23/90

In the Matter of the Proposed Adoption of the Rule of the State Department of Agriculture Governing Organic Certification

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marie Skerbitz, being sworn, says:

That on the 28th day of February, 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to all persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list.

Marie Skerbitz
Mail Room Clerk

DIANE M. WINDHAM
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 1, 1990

Subscribed and sworn to before me
this 28th day of February, 1990.

Diane M. Windham

In the Matter of the Proposed Adoption
of the Rule of the State Department of
Agriculture Governing Organic Certification

CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Carol Milligan, being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a, and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list is accurate, complete and current as of this 28th day of February, 1990.

Carol Milligan
Management Analyst

DIANE M. WINDHAM
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 1, 1990

Subscribed and sworn to before me
this 28th day of February, 1990.

Diane M. Windham

RECEIVED
MAR 29 1990
PLANNING DIVISION

Mar 27/90

Dear Carol,

As per our phone conversation of 3/15 I am putting my objections in writing. I guess its a blanket grope about it although you can pick out the points as they fit.

It is a point of pride with me that I am generally regarded in this area as the resident organic gardener. I'm the one contacted with questions regarding it. I teach the Community Ed classes. The local food Coop refers people to me. The SCS congradulates me on how I have restored this bit of land. As one tech put it he, "Hasn't seen soil like mine since he left Amish country." My County Agent uses me as an example of what can be done. "old timers" give me strokes for doing a good job the way it used to be done.

I'm no doubt "a straw in the wind" in this regard but I must register my concern. I'm no doubt a minority of one in my objections but I do not like what is being done and feel obligated therefor to say so.

I believe we are creating a monster that will be counter-productive. The pressure of the process will compel growers towards simplicity and the organic system is not such. It is an integrated complex process. Clearly the better you do it the more you get buried in paper.

I resent the process of indirection as employed in the process. I hate the "Have you quit beating your wife" questions implicit in the format of the statute.

It clearly is not in the tradition of this country to be assumed guilty until proved innocent. It reminds me of the D.R.B.

I would suggest the process get to the point. It doesn't matter how I control weeds or even if I control weeds for instance. There isn't even any agreement on what it means to control weeds. (See page 21 March '90 Organic Gardening)

In this case the question is not what I do about weeds but what I don't do. I do not use chemicals. That is the point.

Anything I raise is organic. It is as simple as not using chemicals to produce food as per under the table of contents in current O. G. Mags; "Organic means using our understanding of nature as a guide for gardening and living, and growing food without the use of chemical pesticides or synthetic fertilizers."

We go past that criteria. We won't use them for anything. We won't have them on the property. Anytime there is a disagreement with regards borderline application of some material we clear it in advance, even though it is recommended by Rodale literature, we check with O.G.B.A.

It is not my purpose to pick nits with the proces. I am a professional organic vegetable farmer, with or without certification.

Before I was a farmer, I was a teacher and a professional. I met the requirements applied for certification, spent a year on probation applied for recertification and other being no objection was recertified for five years.

If recertification is to be on an annual basis, no problem, but the basis for the original certification is a matter of record.

An inspection with a few direct questions should suffice. The rest is bureaucratic overkill.

I find this proces to be demeaning because I am a professional. If an inspection of my operation finds I have violated ethics or some such problem ban me; withdraw my privledge of certification forever.

A few direct questions such as, "Did you use any chemicals?" "Did you do any other no-no" should be enough.

Because I use no chemicals I must rotate, I must use soil building systems and I must create conditions to control pests. If I don't I won't be in business long but I'll still be organic.

I guess what I'm saying is I want to see some high degree of professionalism. Last year I labled some of my produce as as "Certified Organic", I would rather see it as "Grown by a Certified Organic Grower"

I am fairly certain I'm at odds with OGBA in this matter. Perhaps it is because I was first a "social scientist" and as such concern myself with people.

I do not believe we can find the professionalism required for success in a dehumanizing process.

I suppose by now I've belabored the point. Comes from being a teacher, I guess.

If after checking my application you don't see how this thing would be ludicrous were it not so completely burdensome I've failed.

Can you imagine trying to draw up a rotation model incorporating the varied inputs inherent in my operation?

If you have any problem with terms used they're as per the Encyclopedia of Organic Gardening New Revised Ed.

Sincerely

Edward A. Sorensen

P.S. Looks like B.S. to me

EXHIBIT A

All that part of the Southeast Quarter of the Southwest Quarter of Section 3, Township 111 North, Range 26 West, Nicollet County, Minnesota described as:

Commencing at the Southwest corner of the Southeast Quarter of the Southwest Quarter of Section 3, Township 111 North, Range 26 West; thence North 00 degrees 20 minutes 52 seconds East (assumed bearing) on the West line of said Southeast Quarter of the Southwest Quarter a distance of 433.30 feet to the point of beginning; thence continuing North 00 degrees 20 minutes 52 seconds East on said West line, 861.61 feet to the Northwest corner of said Southeast Quarter of the Southwest Quarter; thence North 89 degrees 48 minutes 24 seconds East on the North line of said Southeast Quarter of the Southwest Quarter, 379.79 feet to the westerly right-of-way line of U.S. Highway Number 169; thence South 00 degrees 11 minutes 36 seconds East on said right-of-way line 33.00 feet; thence South 40 degrees 01 minutes 36 seconds East on said right-of-way line 128.11 feet; thence South 10 degrees 08 minutes 24 seconds West on said right-of-way line 265.23 feet to the point of curvature of a circular curve to the right radius equals 3644.70 feet, a chord bearing of South 14 degrees 14 minutes 21 seconds West, a chord distance of 521.06 feet, a arc distance of 521.51 feet; thence North 83 degrees 18 minutes 08 seconds West, 294.68 feet to the point of beginning.

Said parcel contains 7.95 acres of land and being subject to any and all easements of record.

Organic Growers and Buyers Association

1405 SILVER LAKE ROAD, NEW BRIGHTON, MN 55112
PHONE: 612-636-7933 FAX: 612-636-4135

Revised 2/90

PRODUCER QUESTIONNAIRE

Please Print or Type

Producer Name Sorensen Edward K & Nancy A (Last / First / Middle) Inspector: _____

Business Name Sorensen's Produce Inspection Date: _____

Address Rt 2 Box 90A

City LeSueur County Nicollet

State/Prov. MN Zip 56058 Country USA

Telephone #1 612 665 6675 Telephone #2 _____ FAX _____

Farm mailing address: _____
(if different from above)

(On the back of this page, include directions to your farm from nearest town.)

If certification is granted, what name shall we use on your certificate? _____

Who is paying for your inspection? ✓ Self ____ Other (specify) _____

For self payees: If certification is granted, can OGBA give out your crop information upon request? ✓ Yes ____ No

To the best of my knowledge:
ALL INFORMATION LISTED ON THIS FARM QUESTIONNAIRE IS TRUE AND CORRECT.

Edward K Sorensen — Producer

3/26/90 — Date

Subscribed and sworn to before me this 26th day of March, 19 90

Notary Public Diane K Neumann

My commission expires: 9-30, 19 94.

(seal)

DIANE K. NEUMANN
NOTARY PUBLIC—MINNESOTA
BLUE EARTH COUNTY
MY COMMISSION EXPIRES 9-30-94

Please make copies for yourself of all of your documents prior to the inspection visit.

All information on this questionnaire is kept in the strictest confidence. A copy of this information may be released by the certification payee. It is understood that whomever pays for the certification may have this information at any time upon written request.

This farm visit by an OGBA inspector does not constitute certification. Certification is granted for the current calendar year only through the Organic Growers and Buyers Association in a timely fashion after review and approval by the certification committee.

Certification fees are due and payable at time of inspection regardless of whether or not certification is granted.

Confidentiality agreement is available from OGBA office.

Organic Growers and Buyers Association

1405 SILVER LAKE ROAD, NEW BRIGHTON, MN 55112
PHONE: 612-636-7933 FAX: 612-636-4135

PRODUCER QUESTIONNAIRE

Please Print or Type

Producer Name Sorensen, Edward K & NANCY (Last, First, Middle) Inspector: _____

Business Name Sorensen's Produce Inspection Date: _____

Address Rt 2 Box 90A

City Le Sueur County Nic.

State/Prov. MN Zip 56058 Country USA

Telephone #1 612 665 6675 Telephone #2 _____ FAX _____

1 Mile South of LeSueur west side of 169 South of Peaceful Valley Rd

~~Farm mailing address~~: _____
~~(if different from above)~~

(On the back of this page, include directions to your farm from nearest town.)

If certification is granted, what name shall we use on your certificate? Sorensen's Produce

Who is paying for your inspection? ✓ Self ____ Other (specify) _____

For self payees: If certification is granted, can OGBA give out your crop information upon request? ✓ Yes ____ No

To the best of my knowledge:
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Certification fees are due and payable at time of inspection regardless of whether or not certification is granted.

Confidentiality agreement is available from OGBA office.

OPERATION PROFILE

Enter your acres for each category. Organic acreages for each category should total from FIELD HISTORY (page 8).

Field Crops:

	Organic	Non-Organic
Grains/Row Crop		
Hay/Forages		
Pasture		
Non-Crop (e.g. woods) + Building lot	Approximate 2.6 acres	
Other (specify) _____		
Other (specify) _____		
Total		

Fruit/Vegetable/Specialty Crops:

	Organic	Non-Organic
Vegetables/Herbs	5 acres More or less	
Tree Fruit/Berries		
Other (specify)_____		
Other (specify)_____		
Total	7.6	

Total tillable acres farmed 5 more or less

Total acres requested for organic certification 5 more or less

Total acres requested for transitional organic certification _____

Was some or all requested land previously certified? ✓ Yes ___ No

If yes, by whom? OGBA

Livestock: Are you requesting certification of livestock? ___ Yes ✓ No
If yes, complete livestock questionnaire available from OGBA office.

Processing: Are you requesting processor certification? ___ Yes ✓ No
If yes, complete processor questionnaire available from OGBA office.

Farm Plan

If your operation includes organic and non-organic production, what is your plan for transition to an organic production management system?

N.A.

ORGANIC & NON-ORGANIC PRODUCTION

No NON-ORGANIC Production

A. Equipment

1. Do you have spray equipment? ✓ Yes ____ No

2. If yes, please list type of equipment, and how it is used in your operation:

Type of Equipment	Specific Application/Use
Hand Sprayers	Spray BT

3. Are you currently using the same spray equipment for organic and non-organic production? ____ Yes ✓ No
   Note: Spray equipment used for prohibited products may not be used for organic production.

4. What product(s) do you use to clean your organic spray equipment? Water

Have product labels available at inspection time.

ORGANIC FARM MANAGEMENT

1. If you have an organic production problem, where do you turn for help or information?
   - ___ Professional consultant
   - ✓ Other organic producers O.G.B.A.
   - ✓ Publications/magazines (specify): Rodale Press - Personal library
   - ___ Extension/University (specify): _____

Precipitation/Irrigation

1. What is your average annual precipitation? 23" inches/year Approx. 135 yr Average
2. Do you irrigate? ___ Yes ✓ No
   If yes: a. What type(s)? _____
   b. What is your water source? ___ Well Depth (in feet) _____
   ___ River (specify) _____
   ___ Other (specify) _____
   c. Total acres irrigated: 0
   d. Has irrigation water been tested? ___ Yes ___ No
   If yes, please have test copies available at time of inspection.
3. Is there a history of flooding on any land requested for certification? ___ Yes ✓ No

Soil Management

1. Organic soil management includes testing several fields every year on a rotating basis to monitor soil improvement.
2. Do you test your soils? ✓ Yes ___ No
   If yes, please have copies of past soil test available at time of inspection.
3. What is your average soil humus content? ___% See attached sheet Item # 1
4. Soil building program:
   a.) What is your crop rotation? We are on a 3 or 4 yr Rotation depending on crop Type
   b.) Do you use leguminous crops as: ___ Forage & seed ___ Cover crops
   ✓ Green manure ✓ Interseeding
   c.) Do you use animal manure: ✓ Yes ___ No
   If yes, how and when is it applied? Composted Either as fall sheet or heap during The rest of the year
5. Please list tillage equipment: Kubota - tractor - tiller, plow, cultivator Mantis tiller

6. List below **all** products used in the last 3 years and this year (e.g. soil builders, bacterial amendments, lime, nitrogen, phosphate, potash, micronutrients, foliar sprays, soil applied sprays, seed innoculants, etc.). Have product labels available at inspection time. Also list which fields these products were applied to using the FIELD HISTORY (page 9).

PRODUCT	MANUFACTURER	ADDRESS	APPLICATION RATE

Pest Control

See Item 3

1. List the major pest problems you encounter in your operation. Describe the control measures you are using.

WEEDS (name)	CONTROL PROCEDURE
No major Problem	All control is Mechanical ie.
	Mulch till or remove except;
	When I can work it in I plant Rye as
	A cover crop - Green manure - weed
	retarder We Allow underplants
	We Allow NON competing weeds

INSECTS/DISEASE	CONTROL PROCEDURE
No major Problem	have BT on hand - None used in 89
	used 1/2 lb rotenone - bean Beetles
	in 1989 Mostly we just let
	our wildlife enjoy them

ANIMAL/OTHER	CONTROL PROCEDURE
No major Problem	I have A mouse Killing dog & 4 Traps
Mostly we Just enjoy them	10/22 Ruger mod 20 J. Citiggens 12 ga
	mole traps gopher traps Mod 10 combo
	Traps and an Assortment of leghold traps
	if I should ever Need them. We have weasels

Post Harvest Handling

1. For crops you dry, please list:

CROP	TYPE OF DRYER	MAXIMUM TEMP. USED

2. To maintain audit trail records, storage locations must have a marking/numbering system.
List all your storage locations (e.g. bins, sheds, piles, etc.) and their capacity. Indicate whether storage is on or off farm.

Storage Location #	Capacity (Bu. or Lbs.)	On Farm (✓)	Off Farm (✓)	Organic (✓)	Transitional Organic (✓)	Non-Organic (✓)

If additional space is needed, use back of this page.

3. For audit trail purposes, OGBA must have identification of the crop from field through storage and on to sale.
Describe your lot numbering system.

No trails To date From farm to Market operation - All direct Selling So far - expect No change in 1990

IN Sales to Retail Coop - Invoice #, Amnts. ON open ACCNT containing INTERNATIONAL # on file AT Coop

I Suppose if we ever sell to a distributor we'll start with #1 AND go up. I don't expect Anything to be out there more than AWK.

Seeds & Seedlings

Organic crops must be grown using untreated seeds where possible.

Minnesota Producers: If you are not able to locate untreated seed, submit a written statement addressed to the Minnesota Department of Agriculture so stating. Send this statement to OGBA along with your questionnaire

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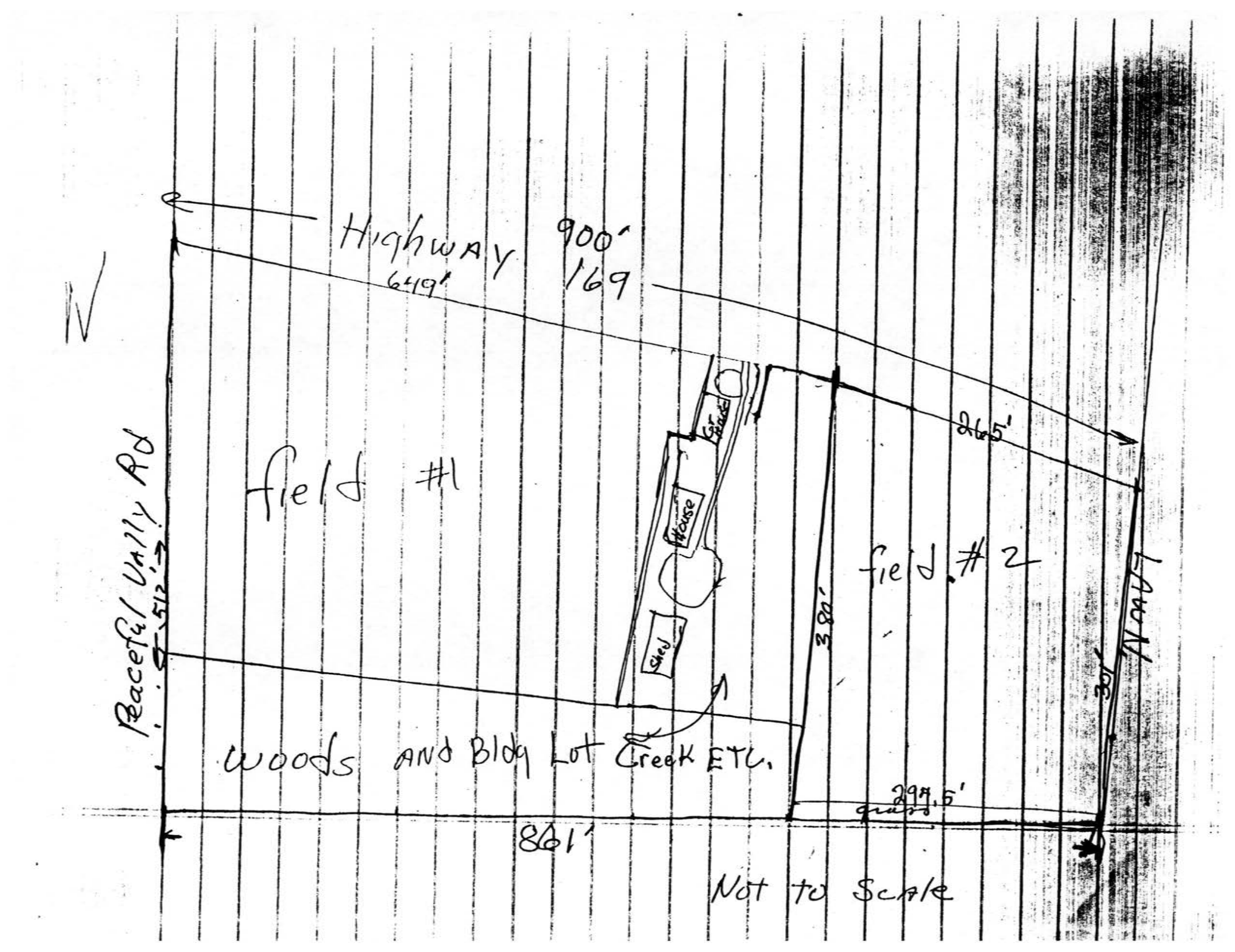
N
Highway 900'
649'
169
field #1
Peaceful Vally Rd
512'
House
Shed
265'
field #2
380'
301'
Woods and Bldg Lot Creek ETC.
297.5'
grass
861'
Not to Scale

Farm & Facility Maps

1. Include maps of all your fields with your questionnaire. List field numbers and acreages on your maps. **We cannot accept your paperwork without proper field maps.** Use ASCS aerial maps if available.

2. Please provide legal descriptions of each parcel to be certified.

3. OGBA requires 30 ft. (minimum) borders where adjacent land is not certified organic. On your field maps, draw a 30' border around each parcel requested for certification. Indicate what the land in this 30' perimeter is used for (example: neighbors land, wetlands, roads, tree lines).

4. Enclose a sketch of your farmstead(s), including buildings.

5. Enclose a sketch of your storage areas. Show how they are numbered or marked and what kind of structure it is (e.g. steel bin, wood granary, pile, quonset, etc.).

Field History

1. Tracking products from production area to retail is critical to the OGBA certification program and maintaining integrity in the organic marketplace.

2. Please complete the Field History on page 9. For **each field** you want certified, fill in the information for the previous three calendar years and this year.

3. Explanation of columns on Field History

a.) OG/T	Enter OG if you are requesting organic status Enter T if you are requesting transitional-organic status
b.) Field #	Must correspond to field numbers shown on your field maps.
c.) Acres/sq.ft.	Must correspond to acres or square feet shown on your field maps.
d.) Rent/Own	Please indicate if field is owned or rented.
e.) Crop	Fill in crop(s) grown. Include successive crops if you raise more than one crop per year (e.g. double cropping).
f.) Variety	Please indicate variety to be grown this year (example: Soybeans - Vinton 81). Optional for fruit and vegetable growers.
g.) Yield Estimate	Estimate your yield for each field. Label as Lbs. or Bu/Acre.
h.) Storage Loc. #	Indicate where you anticipate storing this year's crop.
i.) Restricted & Prohibited Inputs.	List restricted & prohibited inputs used (e.g. herbicides, insecticides, fertilizers).

4. Any adjustments to this years crop plans can be made at the time of your inspection.

Item #1 Because of high PH the humus content is transient to the extreme. Soil tests to measure this are pending the incorporation of the organic material currently in processing.

Tests will be taken in early May as per need.

We are incorporating at present the following estimated amounts:

1. 2000 bales of hay, straw & chopped corn stocks (est. remaining mulch in place 11/89)
2. 120 cu yd. of hardwood sawdust (as above)
3. 60 tons of hen manure (11/89)
4. 200 bu. grass clippings (11/89 as above)

We will incorporate 20 tons of compost from materials stock piled for heap composting as weather permits.

In addition we have on order 300 bales of mixed straw, 100 bales of spoiled hay and have 100 bales of straw on hand. We anticipate several truckloads of wood chips from our power company and several hundred bu. of grass clippings and leaves. Some will be composted or made into leaf mold. The balance will be used as mulch.

We will also be shredding bark, cobs and other woody materials on hand for use as mulch. All of this will be incorporated at future times.

Item # 2

Anticipated Crops for the year 1990

Artichoke, asparagus, beans (8), beets, broccolli (6), cabbage (4), carrots (2), cauliflower (6), celery, chard, corn (5), cucumber (6), eggplant 12, garlic (4), kohlrabe (3), Leeks (3), Lettuce 4, mustard (2), onions (6), snap peas, sugar pea, hot peppers (10), sweet peppers (8), pumpkins (4), radish (6), daikon (4), rubarb (3), rutabaga, spinach (3), summer squash (8) winter squash (10), tomato (10), turnips (3), wong bok (6), Pak Choi (4), bitter melons (4), winter melons (4) summer melons, muskmelons (4), luffa (2), chives (3), fennel, tomatillos (3), celtuce, coriander, shallots, dill, convolvulvas, garland cyrsanthemum, burdock, goi lohn, Basella Alba, parsley, radicchio, ginger, Yu tsai, leaf Amaranth, Kai Yan Tsai, bottle gourd, orach, watercress, beetberry, early green long gourd, Large and long gourd, Lotus, arrowroot, various flower blossoms, agastache rugusa, cupparis nummeulceria, several basils, parsnips, lemon grass, oriental pickling melon, tsai shim, Chinese kale, watermelons, cherries, plums, sunchokes, and others as demands change

We will also be planting 9 varieties of Actinidia Kolosukta (1 ea) 2 bush cherries (25 ea) and at least one grape (35). Perhaps others if I "take a notion" and find the time.

Item 3

Our pest control is part of an integrated system that involves several facets.

Included are: 1. Habitat, we provide a broad spectrum of varied habitats for many beneficials. The factor is considered in both macro and micro. Any landscaping features as many kinds of habitat as can be integrated. Zero chemical use and large amounts of organic materials in and on the soil that encourages predators and discourages pests. An example is straw mulch for cukes to discourage beetles and promote hunting spiders etc.

② Succession plantings of complimentary plants

③ Companion planting

④ Interplanting

⑤ Underplants

⑥ Trap crops

⑦ Use of microbes

⑧ Feeding beneficials

FIELD HISTORY

	OG/T	FIELD #	1990 ACRES/SQ.FT.	Rent, Own	CROP	VARIETY	YIELD ESTIMATE (Lbs or Bu/A)	STORAGE LOC. #	~~RESTRICTED &~~ PROHIBITED * INPUTS	1989 CROP	~~RESTRICTED &~~ PROHIBITED * INPUTS	1988 CROP	~~RESTRICTED &~~ PROHIBITED * INPUTS	1987 CROP	~~RESTRICTED &~~ PROHIBITED * INPUTS
	OG	1	3		Mixed veg	50+	No est.	NA	None	Mixed	None	Mixed	None	Mixed	None
	OG	2	2		Mixed Veg	50+	No est.	NA	None	Mixed	None	Mixed	None	Mixed	None
	OG	Green	New Greenhouse		Mixed	?	NO EST	NA	None						
							Item # 2.		The criteria requested is meaningless in this case.						
					Restricted		INPUT History:			We use BLACK Plastic Mulch All years					
									1989-90	We are composting with Factory Farm Hen Manure from Crystal Farms Pre-approval Granted by O.G.B.A. IN '89 Total 60 Tons					
									87-88	We used Steamed Bone meal & Farmstead Blood meal IN composting - 100 lbs ea. Total					
									87-89	We used Piedmont ONION, Pepper & Tomatoe Plants					
							Greenhouse		I have 2 bags of Metro MIX 360 Most of which will be used for ORNAMENTAL Cuttings Although I have 2 trays of Seeds (Pepper, Mixed Eggplant, Tomatoes) IN which I Mixed Some IN When I RAN Short of Vermiculite that was Back-ordered ON me						

3/29/90
R2-Maple Hill
Long Prairie, Mn.
56347

Carol Milligan
Mn. Dept. of Agriculture
90 West Plato Blvd.
St. Paul, Mn. 55107

RECEIVED
APR 0 2 1990
PLANNING DIVISION

Ms. Milligan:

I am writing to request a public hearing regarding the proposed permanent rules relating to organic certification.

The rules are generally vague and discriminate against organic producers and small organic producers.

I am concerned about the possibility that a laboratory test could jeopar-

296-3353

~~701-780-4188~~

doze an entire seasons crop because of the length of time to do a test. These tests are also prohibitively expensive for small growers. A test should be conducted at the department's expense.

I am also concerned that there are no time constraints placed on the certifying agency. A grower must feel confident that the steps necessary to accomplish certification will be taken in a timely manner.

Sincerely

Tim King

Nathan Clark
R3 Box 249
Sauk Centre, MN 56378

March 19th, 1990

RECEIVED
MAR 22 1990
PLANNING DIVISION

Ms. Carol Milligan
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Request for a public hearing and Comments on the Proposed Permanent Rules Relating to Organic Certification Parts 1556.0100 to 1556.0127.

1556.0105 DEFINITIONS:
Subp. 3 Certification "...Compliance must be determined through the use of questionnaires, affidavits, on-site inspections, laboratory tests, record audits, and other procedures."

Comment: What are these "other procedures"? All procedures that an enterprise and the people working in that enterprise may have to undergo should be definitely and precisely stated, and compliance determination should be strictly limited to those procedures.

1556.0100 PURPOSE
"...verifying that a product is produced, processed, and distributed in compliance with established Minnesota organic standards, through a process that includes ... laboratory testing."

and 1556.0109 CERTIFICATION REQUIREMENTS
Subp. 3 On-site inspection. "If, necessary, laboratory tests must be ordered."

Comment: It should be made clear of what nature, extent and kind are the laboratory tests required and under what circumstances they may be required. Is it, for instance, a single soil residue test on each field, or separate residue tests for each crop? Laboratory tests can be very expensive, and a small diversified producer could find excessive lab test fees an unbearable financial burden. Also the time it takes to have laboratory tests done should be considered, so that a producer's main early cash crops do not have to go uncertified while waiting for the lab tests to be done and certification to be granted. I suggest that the department could have a test done at its own expense if there is reasonable ground for suspicion of non-compliance and/or conduct random sample tests to monitor compliance. Non-compliance could result in revocation of certification and/or a fine. The basic idea is that a person or enterprise is considered innocent (of non-compliance) until proven guilty, and not the other way around.

1556.0105 DEFINITIONS
Subp. 7 Designated certification organization.
"'Designated certification organization' means an organization made up of organic food growers, manufacturers or sellers that has applied to the commissioner of agriculture and been appointed by the commissioner as an official certifying organization."

Comment: The wording of the rules should insure that applications will be considered and appointments made in a timely and equitable manner for any and all such organizations that apply.

1556.0107 CERTIFICATION PROCEDURE
"A certification applicant must apply for organic certification for a product or facility on forms provided by the department..."

and 1556.0109 CERTIFICATION REQUIREMENTS
Subp. 2 Farm Certification documentation. "Documentation for whole farm or field certification must be in the form of a detailed field history for a minimum of three years. The field history for each field must include: ...
C. Specific crops planted in each field for each of the previous three years,
D. Soil building activities used on each organic field..."

Subp. 4 Record keeping "In order to establish an audit trail, record keeping requirements include:
A. Field-by-field fertilization, cropping, and pest management histories."

Comments: Forms for documentation should accommodate any and all organic enterprises. Small scale intensive horticulture that uses the ecologically sound principles of intermingling and intercropping of plants to provide the greatest possible genetic diversity per unit of space should not be excluded from certification merely because documentation forms provided by the department will only fit a larger scale monoculture farming designed to accommodate machines and mechanical systems. Nor should the documentation requirements make a disproportionately greater burden of paper work for small scale, diverse, intensive horticultural enterprises than for larger scale monocultural agricultural enterprises. The rules should in no way favor larger scale monoculture agriculture and/or discriminate against small scale diversified agriculture.

1556.0121 DATA PRIVACY
"In submitting data required by parts 1556.0010 to 1556.0127, the applicant may:
A. Clearly mark any portions that, in the applicant's opinion, are trade secrets, commercial, or financial information; and
B. Submit the marked material separately from other material."

Comments: Data privacy should be extended to include any data the applicant considers to be of a personal or confidential nature, and insurance should be made that availability of this data will not go beyond the inspector and the certification committee.

Closing Comments: I find it a highly controversial and questionable matter for the state or a department of the state to assume jurisdiction and rule over the procedure of organic certification. I also feel grave concern over the possible implications for organic enterprises of the proposed rules. Therefore: I hereby request that there be a public hearing on the Proposed Permanent Rules Relating to Organic Certification Parts 1556.0100 to 1556.0127.

Sincerely,
Nathan Clark

Additional Comments on the rulings on Organic Food Standards parts 1555.0005 to 1555.0013

1555.0009 RECORDS

Comments: The producer is required to keep extensive and detailed records, to keep them on file for at least three years, and to make information from those records available to the department on demand. Likewise processors, manufacturers and vendors must have accurate records of all ingredients, of suppliers, their addresses, invoices, date and quantity of purchases, etc. These records to be kept for three years and made available on demand.

Pure food, grown without chemicals, processed and manufactured without artificial additives and adulterations, should be the standards and norm by which other food is judged. Growers, processors and vendors of such food should be encouraged, and not discriminated against. It is highly unfair to make such requirements of the organic grower, while not requiring "conventional" growers to record all the chemicals used, fertilizers, herbicides, pesticides, fungicides, etc., etc. with dates and amounts used, on which crops, with records of all crops grown on all fields, with quantity, date and acreage harvested, etc., kept for three years and available on demand.

Likewise with record requirements for processors and particularly for vendors. What if every grocery store had to keep such records on every food item sold, and keep them for three years, having them available on demand? The result of these regulations will be that no conventional market will want to consider carrying organic foods. These rules also will insure that organic food prices will be high and unattractive to most consumers.

There have been numerous articles in the national media in the last few years on the upsurge of interest in organic foods, and talk of organic foods "going mainstream". These regulations seem designed to insure that this will not happen.

The proper course for the department would be to require all non-organic foods to be clearly labeled as such, with all chemical fertilizers, herbicides, pesticides, fungicides, etc. used listed on the label. Then consumers could assume they were buying pure food, and they would be properly informed if that were not the case.

Department of Agriculture

Adopted Permanent Rules Relating to Organic Certification

Rules as Adopted

ORGANIC CERTIFICATION

1556.0100 PURPOSE.

Parts 1556.0100 to 1556.0127 are authorized by Minnesota Statutes, section 31.95, subdivision 4. The purpose of parts 1556.0100 to 1556.0127 is to provide a framework for verifying that a product is produced, processed, and distributed in compliance with established Minnesota organic standards, through a process that includes on-site inspection, record keeping, laboratory testing, and an audit trail.

1556.0105 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1556.0100 to 1556.0127.

Subp. 2. **Audit trail.** "Audit trail" means an unbroken chain of documentation that traces the growing, harvesting, handling, and processing history of a product from seed to sale.

Subp. 3. **Certification.** "Certification" means the process by which a certification organization verifies that a producer, processor, or handler meets Minnesota organic food law requirements under Minnesota Statutes, sections 31.92 to 31.94 and parts 1555.0005 to 1555.0013. Compliance must be determined through the use of questionnaires, affidavits, on-site inspections, laboratory tests, record audits, and other procedures.

Subp. 4. **Certification committee.** "Certification committee" means a panel or body consisting of at least three persons appointed by the designated certification organization to review applications for organic certification, oversee the site inspection process, supervise and manage records review and audit trail activities, and grant or reject certification status to applicants. At least one member of the committee must be

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knowledgeable about the product or facility that is to be inspected and certified.

Subp. 5. **Certified organic.** "Certified organic" means a label statement that indicates that a producer, product, or handler meets the requirements of Minnesota Statutes, sections 31.93 and 31.94, and parts 1555.0005 to 1555.0013, and that a designated certification organization or another certification program approved by the commissioner has verified compliance with those standards.

The term "certified" and any derivative of the term "certified" may only be used on a product whose organic production and handling history has been verified by a designated certification organization or by another certifying organization approved by the commissioner that certifies organic products.

Subp. 6. **Department.** "Department" means the Department of Agriculture.

Subp. 7. **Designated certification organization.** "Designated certification organization" means an organization made up of organic food growers, manufacturers, or sellers that has applied to the commissioner of agriculture and been appointed by the commissioner as an official certifying organization.

Subp. 8. **Enterprise.** "Enterprise" means the business and physical facilities of an applicant that are used to produce, process, or handle certified organic products.

Subp. 9. **On-site inspection.** "On-site inspection" means the process whereby a certification inspector visits and inspects the soil, growing conditions, records, and facilities on an applicant's farm, ranch, or property, whether rented or owned by the applicant.

Subp. 10. **Producer.** "Producer" means a person who is responsible for growing or raising organic food.

Subp. 11. **Handler.** "Handler" means a person who sells, transports, stores, purchases, processes, packages, or in any other way handles organically produced agricultural products.

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1556.0107 CERTIFICATION PROCEDURE.

A certification applicant must apply for organic certification for a product or facility on forms provided by the department and available through a designated certification organization. The certification process must be completed no later than 60 days after the producer or handler has been contacted by the designated certification organization to initiate the certification process. If the certification committee determines that an applicant is ineligible for certification, a certified letter stating reasons for ineligibility must be sent to the applicant within ten days of the determination. This decision may be appealed under part 1556.0117.

Certification for producers and handlers must be renewed annually.

1556.0109 CERTIFICATION REQUIREMENTS.

Subpart 1. **Separation of product.** A producer or handler of both organic and nonorganic products on the same farm, ranch, or property shall demonstrate the ability to keep the products separate.

Subp. 2. **Farm certification documentation.** If possible, the certification committee shall certify whole farms. However, individual fields or parts of fields may be certified. Documentation for whole farm or field certification must be in the form of a detailed field history for a minimum of each of the previous three years. The field history for each field must include:

A. field identification, whether owned or leased, size, and crop currently being produced in that field;

B. crop and spray plan for an applicant's nonorganic fields that are adjacent to organic fields;

C. specific crops planted in each field for each of the previous three years;

D. soil building activities used on each organic field;

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E. amount and source of fertilization materials used on each organic field;

F. methods of weed control;

G. pest control problems in the field, during transportation and in storage or processing facilities and what actions were taken to solve the problem; and

H. how crops are harvested, transported, stored, dried, and protected from insects, contamination, and deterioration.

Subp. 3. **On-site inspection.** On-site inspections are required and include physical inspection of the enterprise. The enterprise's records must be reviewed at this time. If necessary, laboratory tests must be ordered. If a second on-site inspection becomes necessary it must be done at the ~~producer~~ producer's or ~~vendor's~~ handler's expense.

The applicant shall sign an affidavit in the presence of a notary or two witnesses attesting to the fact that all of the information supplied to the certification inspector is true and correct at the time of the on-site inspection. The certification committee shall inform the applicant in writing within 60 days of the on-site inspection whether certification status is granted. If status as a certified enterprise is denied, the certification committee shall provide written reasons for the denial by certified letter. This decision may be appealed in accordance with part 1556.0117.

Subp. 4. **Record keeping.** In order to establish an audit trail, record keeping requirements include:

A. field-by-field fertilization, cropping, and pest management histories; lot, bin, or shipment numbers and dates; and an indication of field of origin if a crop is produced on more than one field and, if both organic and nonorganic methods are used to produce, process, or manufacture the same product, records demonstrating that there has been no possibility of commingling of the products;

B. if both certified organic and noncertified products are produced by an applicant, records demonstrating

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that no commingling has occurred during harvest, storage, processing, transportation, packaging, or sale;

C. for livestock, records of all feed rations, including supplements, and their sources. Sources of young stock, if purchased off-farm, breeding, medication, and veterinary care history must be recorded. Any livestock to which necessary medications have been administered must be segregated or otherwise clearly identified. This also applies to animal products produced by or from that stock. There must be no possibility of interchange between certified organic and noncertified organic or conventional livestock products on a farm or in a processing or manufacturing facility; and

D. records of all laboratory analyses performed, including soil tests, plant tissue tests, bacteria counts, and residue tests for toxic contaminants in soil, water, crops, livestock products, or manufactured goods.

Handler's records must be held for three years and include purchase orders, invoices, and inventory, shipping, and processing records. Applicants must provide the designated certification organization with updates and changes in their crop management practices during the time that certification is in effect.

1556.0111 CERTIFICATION INSPECTORS.

All certification inspectors must be impartial and independent, and must meet the following requirements:

A. The inspector may not be a party to a transaction involving the sale or distribution of products of the applicant being inspected.

B. The inspector may not be an employee of, or have any direct financial interest in, a company that is a party to a transaction involving the products of the applicant being inspected.

C. Advice provided by the inspector is limited to helping the applicant meet Minnesota certification standards and improving organic production techniques. Private consultation

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with the inspected applicant for an additional fee at any time within the certification year constitutes grounds not only for dismissing the inspector, but for revoking the applicant's right to certification.

D. The inspector may not have worked for the applicant being inspected in any capacity in the year before the inspection and may not work for the applicant in the two years following the inspection.

1556.0113 TRAINING OF CERTIFICATION INSPECTORS.

Certification inspectors must receive training in organic certification procedures and other related issues from a training course approved by the designated certification organization and the department. Certification inspectors are also required to pass a test approved by the designated certification organization and the department to become an approved certification inspector.

1556.0115 DECERTIFICATION.

Certification ~~may~~ must be revoked for a violation of Minnesota Statutes, sections 31.92 to 31.94 ~~and~~, parts 1555.0005 to 1555.0012 or parts 1556.0100 to 1556.0127 ~~if sufficient cause is found to revoke certification~~. The certified producer or ~~vendor~~ handler must be notified by registered mail of the decision and the specific reasons for the revocation. The decision may be appealed in accordance with part 1556.0117.

The department must be notified in writing by the designated certification organization of all certifications and decertifications by the first of each month.

1556.0117 COMPLAINTS AND APPEALS.

Complaints should be directed to the office of the designated certification organization and the organization must be given 30 days to respond to the complaint.

If an applicant wishes to contest a determination made by the designated certification organization a letter of appeal must be filed with the certification committee within ten

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business days of the contested determination.

The burden of proof of injustice rests with the applicant filing the appeal. Requests and notices of appeal must be made in writing and accompanied by supporting documentation. The certification committee has 30 days to make findings on the contested issue. If the applicant filing the appeal feels that undue financial harm will occur due to the length of time taken by the appeal process the applicant may request an expedited hearing. The certification committee has 15 days to respond to the complaint with a written decision and the reasons for it.

If the applicant objects to the certification committee's decision, the applicant may appeal the decision to the Department of Agriculture. The department has 30 days to concur or overturn the certification committee's decision. The department's decision may be appealed under the Minnesota Administrative Procedure Act.

1556.0121 DATA PRIVACY.

In submitting data required by parts 1556.0010 to 1556.0127, the applicant may:

A. clearly mark any portions that, in the applicant's opinion, are trade secrets, commercial, or financial information; and

B. submit the marked material separately from other material.

1556.0123 FAIR LABOR PRACTICES.

An operator of a certified organic enterprise shall comply with applicable federal, state, and local laws concerning minimum wages or other compensation, workers' compensation insurance, working conditions, sanitary facilities, rest periods, safety conditions, housing, and arbitration.

1556.0125 FAIR TRADE PRACTICES.

Fair trade practices require that a certified organic enterprise may not:

A. pass off goods or services as those of another;

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B. cause the likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

C. cause the likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by another;

D. use deceptive representations or designations of geographic origin in connection with goods or services;

E. represent that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

F. represent that goods or services are of a particular standard, quality, or grade if they are of another; and

G. disparage the goods, services, or business of another by false or misleading representation of fact.

1556.0127 LABELING.

A product that is labeled ~~Minnesota~~ certified organic or with any derivative of that term must meet ~~Minnesota~~ organic standards contained in parts 1555.0005 to 1555.0013. If a product is labeled "certified organic" or with any derivative of that term the name of the certifying person or organization must be stated on the label.

A handler of certified organic products shall maintain records that allow the product to be traced to its origin and show proof of compliance with the standards indicated on the product's label.

REPEALER. Minnesota Rules, parts 1555.0005, subparts 2 and 13; 1555.0011; and 1555.0013, are repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Adopted Permanent Rules Relating to Organic Certification

AGENCY: Department of Agriculture

MINNESOTA RULES: Chapter 1556

The attached rules are approved for filing with the Secretary of State

Craig E. Lindeke
Senior Assistant Revisor

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of the Rule of the State Department of Agriculture Governing Organic Certification

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

The above-entitled rule was withdrawn from rule review by the Attorney General on May 9, 1990.

The rule was modified and based on the comments and evidence in the record before the department, I find the following:

M. R.1556.0115

This part was amended to clarify that certification will be revoked whenever a certified party is found in violation of the statutes or rules governing organic food. This change does not constitute substantial change because 1) no new classes of people are affected by the rule since the change; 2) new subject matter is not introduced, but current subject matter is clarified; and 3) it does not change the effect of the rule but ensures consistent application of the rule.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as the rule governing organic certification as modified is adopted this 4th day of June, 1990, pursuant to authority vested in me by Minnesota Statutes, section 31.95, subdivision 4.

Jim Nichols
Commissioner

RECEIVED
JUN 05 1990
Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103