

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 205

[Doc. #AMS-NOP-11-0073; NOP-11-14]

#### National Organic Program: Notice of Draft Guidance for Accredited Certifying Agents, Certified Operations, and Non-Certified Handlers of Certified Organic Products

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

**ACTION:** Notice of availability with request for comments.

**SUMMARY:** The National Organic Program (NOP) is announcing the availability of a draft guidance document intended for use by accredited certifying agents, certified operations and non-certified handlers of certified organic products. The draft guidance document is entitled as follows: Handling Bulk, Unpackaged Organic Products (NOP 5031).

This draft guidance document is intended to inform the public of NOP's current thinking on this topic. The NOP is seeking comments on this draft guidance document. A notice of availability of final guidance on this topic will be issued upon its final approval. Once finalized, this guidance document will be available from the NOP through "The Program Handbook: Guidance and Instructions for Accredited Certifying Agents (ACAs) and Certified Operations." This Handbook provides those who own, manage, or certify organic operations with guidance and instructions that can assist them in complying with the NOP regulations. The current edition of the Program Handbook is available online at <http://www.ams.usda.gov/nop> or in print upon request.

**DATES:** To ensure that NOP considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written

comments on the draft guidance by April 3, 2012.

**ADDRESSES:** Submit written requests for hard copies of this draft guidance document to Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA-AMS-NOP, 1400 Independence Ave. SW., Room 2646 So., Ag Stop 0268, Washington, DC 20250-0268. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance documents.

Interested persons may comment on this draft guidance document using the following procedures:

*Internet:* <http://www.regulations.gov>.

*Mail:* Comments may be submitted by mail to: Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA-AMS-NOP, 1400 Independence Ave. SW., Room 2646 So., Ag Stop 0268, Washington, DC 20250-0268.

Written comments responding to this request should be identified with the document number AMS-NOP-11-0073; NOP-11-14. You should clearly indicate your position and the reasons for your position. If you are suggesting changes to the draft guidance document, you should include recommended language changes, as appropriate, along with any relevant supporting documentation.

USDA intends to make available all comments, including names and addresses when provided, regardless of submission procedure used, on [www.regulations.gov](http://www.regulations.gov) and at USDA, AMS, NOP, Room 2646-South building, 1400 Independence Ave. SW., Washington, DC, from 9 a.m. to noon and from 1 to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South building to view comments from the public to this notice are requested to make an appointment by calling (202) 720-3252.

**FOR FURTHER INFORMATION CONTACT:** Melissa R. Bailey, Ph.D., Director, Standards Division, National Organic Program (NOP), USDA-AMS-NOP, 1400 Independence Ave. SW., Room 2646-So., Ag Stop 0268, Washington, DC 20250-0268, Telephone: (202) 720-3252, Email:

[NOP.guidance@ams.usda.gov](mailto:NOP.guidance@ams.usda.gov), or visit the NOP Web site at: [www.ams.usda.gov/nop](http://www.ams.usda.gov/nop).

**SUPPLEMENTARY INFORMATION:**

## I. Background

The NOP selected the topic for the draft guidance announced through this notice in response to a recommendation issued by the National Organic Standards Board (NOSB) in October 2010. On October 28, 2010, the NOSB finalized a recommendation requesting that the NOP clarify the requirements and limitations of 7 CFR 205.101(b) of the NOP regulations.<sup>1</sup> This section of the regulations addresses the conditions that a handling operation must meet in order to be excluded from the organic certification requirements of Part 205. The NOSB recommended that NOP issue guidance to clarify how these conditions apply to handlers of bulk, unpackaged organic products. The NOP is responding to this recommendation by issuing draft guidance to outline the types of handling operations that are or are not excluded from organic certification. The draft guidance proposes that brokers, traders or distributors of bulk, unpackaged organic commodities or livestock are not excluded from certification and, therefore, must be certified organic operations.

## II. Significance of Guidance

This draft guidance document is being issued in accordance with the Office of Management and Budget (OMB) Bulletin on Agency Good Guidance Practices (GGPs) (January 25, 2007, 72 FR 3432-3440).

The purpose of GGPs is to ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements. The draft guidance, when finalized, will represent the NOP's current thinking on the topic. It does not create or confer any rights for, or on, any person and does not operate to bind the NOP or the public. Guidance documents are intended to provide a uniform method for operations to comply that can reduce the burden of developing their own methods and simplify audits and inspections. Alternative approaches that can demonstrate compliance with the Organic Foods Production Act (OFPA), as amended (7 U.S.C. 6501-

<sup>1</sup> NOSB Recommendation: Clarifying Limitations of § 205.101(b). Issued on October 28, 2010. Accessible on the NOP Web site at: <http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5087789&acct=nosb>.

6522), and its implementing regulations are also acceptable. As with any alternative compliance approach, the NOP strongly encourages industry to discuss alternative approaches with the NOP before implementing them to avoid unnecessary or wasteful expenditures of resources and to ensure the proposed alternative approach complies with the Act and its implementing regulations.

#### Electronic Access

Persons with access to Internet may obtain the draft guidance at either NOP's Web site at <http://www.ams.usda.gov/nop> or <http://www.regulations.gov>. Requests for hard copies of the draft guidance documents can be obtained by submitting a written request to the person listed in the ADDRESSES section of this Notice.

**Authority:** 7 U.S.C. 6501–6522.

Dated: January 30, 2012.

**Robert C. Keeney,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2012–2377 Filed 2–2–12; 8:45 am]

**BILLING CODE 3410–02–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 703

#### Financial Derivatives Transactions To Offset Interest Rate Risk; Investment and Deposit Activities

**AGENCY:** National Credit Union Administration.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** Through this Advance Notice of Proposed Rulemaking (“ANPR”), the NCUA Board (Board) requests additional public comments to identify the conditions for federal credit unions (FCUs) to engage in certain derivatives transactions for the purpose of offsetting interest rate risk (IRR).<sup>1</sup> This ANPR follows an earlier Advance Notice of Proposed Rulemaking (ANPR I) on

derivatives transactions issued for comment (76 FR 37030, June 24, 2011). This ANPR asks additional questions regarding the conditions under which NCUA may grant authority for an FCU to engage in derivatives transactions independently.

**DATES:** Comments must be received on or before April 3, 2012.

**ADDRESSES:** You may submit comments by any one of the following methods.

(Please send comments by one method only):

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Email:** Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name]—Comments on Advance Notice of Proposed Rulemaking for Part 703, Financial Derivatives Transactions To Offset Interest Rate Risk” in the email subject line.

- **Fax:** (703) 518–6319. Use the subject line described above for email.

- **Mail:** Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

- **Hand Delivery/Courier:** Same as mail address.

**Public Inspection:** You can view all public comments on NCUA's Web site at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an email to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

#### FOR FURTHER INFORMATION CONTACT:

Jeremy Taylor, Senior Capital Markets Specialist, at (703) 518–6628; or Lance Noggle, Staff Attorney, Office of General Counsel, at (703) 518–6555. You may also contact them at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

#### SUPPLEMENTARY INFORMATION:

I. Background

II. Questions for Comment

#### I. Background

In June 2011, the Board issued ANPR I (76 FR 37030, June 24, 2011) requesting public comment on whether and how to modify its rule on investment and deposit activities to permit FCUs to enter derivatives transactions for the purpose of offsetting

IRR. It now seeks additional information to assist in drafting a proposed rule for FCUs to independently engage in derivatives transactions (*i.e.*, without program oversight by a third-party provider).

ANPR I requested comment in five areas. Three areas asked for comments on NCUA's current pilot program and third-party programs in general. Only two areas concentrated on independent derivatives authority. As the Board focuses on developing requirements for such authority, it seeks additional information to help ensure that a rule granting independent derivatives authority is manageable for both participating FCUs and NCUA, while simultaneously protecting the credit union industry from undue risk.

#### II. Questions for Comment

Since the inception of the derivatives pilot program, very few FCUs have submitted applications seeking permission to independently engage in derivatives to offset IRR. In ANPR I, the Board sought comment on whether it should allow FCUs to independently engage in derivatives activities. Nearly all commenters who responded to this question supported independent derivatives authority for FCUs. As discussed more fully below, however, not all commenters agreed on the conditions under which the NCUA should grant such authority.

The Board is assessing the parameters under which NCUA may authorize FCUs to independently engage in derivatives activities, and invites comment on the issues raised in this ANPR. To facilitate consideration of the public's views, please address your comments to the specific questions, and organize and identify them by corresponding question number so that each question is addressed separately. To maximize the value of public input on each issue, it is also important that commenters provide and explain the reasons that support each of their opinions. There will be a further opportunity to comment on these issues should the Board issue a proposed rule.

#### Eligibility of Applicant FCUs for Independent Derivatives Authority

The Board is considering eligibility requirements for FCUs seeking authority to independently enter into derivatives transactions. ANPR I asked several eligibility questions, including what criteria NCUA should consider in granting or denying a request for independent derivatives authority. As noted above, nearly all commenters who addressed the issue of independent derivatives authority supported it. Yet

<sup>1</sup> Interest rate risk refers to the vulnerability of a credit union's financial condition to adverse movements in market interest rates. For example, changes to a credit union's funding costs generally are considered part of the inherent interest rate risk associated with a fixed-rate mortgage loan. A borrower with a fixed-rate mortgage loan is unaffected by increases in market interest rates because his payment is based on a “fixed” rate. The credit union that originated the mortgage loan, however, is subject to losses in the market value of these mortgages from the increases in market interest rates. Furthermore, as market interest rates rise, there is a concomitant increase in the credit union's funding costs, or the interest rate the credit union pays on the money it uses to “fund” the mortgage loan.