

**FORMAL RECOMMENDATION BY THE
NATIONAL ORGANIC STANDARDS BOARD (NOSB)
TO THE NATIONAL ORGANIC PROGRAM (NOP)**

Date: March 18, 2005

Subject: Information on Certificates of Organic Operation

Chair: Jim Riddle
(sign)

Recommendation

The NOSB hereby recommends to the NOP the following:

Rulemaking Action: X
Guidance Statement: X
Other: X

Statement of the Recommendation (including Recount of Vote):

The NOSB recommends that NOP implement policies and procedures to expand the information required on certificates of organic operation; standardize the terminology used on certificates; provide consistency in the amount and type of information provided; and reduce regulatory burdens imposed on accredited certifying agents.

The NOSB recommends that the NOP take the following steps to accomplish the objectives stated above:

- 1) Require that all certificates issued by ACAs verifying compliance with the NOP contain the phrase, "Certified as compliant with the USDA's National Organic Program (7 CFR Part 205)";
- 2) Require that certificates issued by "recognized" certification bodies indicate which operations comply with the NOP;
- 3) Require ACAs to use the standard term "date of most recent annual update" on organic certificates;
- 4) Expand the "categories of organic operation" to include detailed information on the certified crops and/or products produced by each operation;
 - a. For processed food products, the labeling category under which the product is approved.
- 5) Use standardized terms for the identification of products and processes to be listed on certificates;
- 6) Establish a database whereby all ACAs would issue and maintain certificates of NOP compliance;
- 7) Design the database to allow for the upload of data from existing ACA databases; and
- 8) Provide ACA training and support services to assure that the database is implemented and used correctly and uniformly.

Board vote – March 2, 2005

11 yes, 0 no, 2 abstain, 1 absent

Rationale Supporting Recommendation (including consistency with OFPA and NOP):

Rationale provided in text of recommendation below.

Response by the NOP:

Updated 2/25/05

Information on Certificates of Organic Operation
National Organic Standards Board
Certification, Accreditation, and Compliance Committee
Adopted by the NOSB on March 2, 2005

I. Introduction

The NOP and NOSB have received correspondence and public comments about deficiencies in the current requirements for information on “certificates of organic operation” (hereafter referred to as “certificates”). The NOSB Certification, Accreditation, and Compliance (CAC) Committee recommends that the NOP implement policy changes to allow for comprehensive information on certificates and to facilitate real-time management of data maintained and submitted by accredited certifying agents (ACAs).

As indicated below, there is a need to provide comprehensive and accurate information on certificates to: bring consistency to the certification process; facilitate commerce of organic products; and improve compliance and enforcement capabilities. There is also a need to reduce the regulatory burden placed on certifying agents and to streamline the information they are required to provide to the public and to the NOP.

II. Background

A. Issues of Concern

There are many types and styles of certificates issued by accredited certifying agents. The National Organic Program Final Rule currently requires that certificates specify the: name and address of the certified operation; effective date of certification; categories of organic operation, including crops, wild crops, livestock, or processed products produced by the certified operation; and the name, address, and telephone number of the certifying agent. The NOP requirements are the minimum information which must appear on certificates. Additional optional information is allowed.

There is no requirement that certificates specify the standard to which an operation is certified. This presents a verification and compliance problem, since the NOP accredits numerous certifying agents around the world who certify to multiple standards, in addition to the NOP standard. The name and address of the certifying agent is not sufficient to determine if the operation listed on the certificate is indeed certified to the NOP standard. While the NOP has encouraged certifiers to include statements of compliance to NOP regulations, ACAs should be required to issue certificates which explicitly state that the operation listed on the certificate complies with the NOP.

The NOP has approved several foreign government accreditation programs. The certifiers recognized under such arrangements are not directly accredited by the NOP. There is a need for certificates issued by such certification bodies to be able to indicate which operations they certify comply with the NOP. There is presently no requirement and no mechanism to convey such information.

Though certificates indicate the effective date of certification, there is no way of knowing from the information on a certificate if an operation in question is still certified, since §205.404(c) requires that an operation’s certification “continues in effect until surrendered by the organic operation or suspended or revoked”. The absence of expiration or renewal dates on certificates impairs the ability of buyers to know if suppliers are still certified, and prevents inspectors, certifying agents, and regulatory enforcement officials, by reviewing the information on certificates, from determining if suppliers were still certified at the time of sale of an organic product. There is a need to allow buyers, inspectors, certifiers, and regulators to know with full confidence the current certification status of any given operation.

Presently, ACAs are using a variety of terms to refer to dates on certificates, including “date of issuance”, “annual monitoring date”, “date issued”, “since ...”, “issued ...”, “renewed ...”, “certified on ...”, “inspected ...” and “date of entry”. There is a need to standardize the terms used for date of issuance on organic certificates.

The “categories of organic operation” (crops, wild crops, livestock, or processed products) listed in the NOP rule are extremely broad. These broad categories don’t provide buyers, inspectors, certifiers, or regulatory officials with sufficient information to determine if an operation is certified to produce and/or handle the specific types of products offered for sale. While some ACAs currently do so on a voluntary basis, there is a need to require that all ACAs provide more detailed information on certificates about the types of production and/or handling activities conducted by the certified operation. In addition, where a processed product is used as an ingredient by an organic end user, it is imperative that the label claim of the organic ingredient is clearly indicated on that product’s certificate. In this way, the end user can demonstrate compliance with the organic content requirements for the product they are producing.

There is also a need for the use of standardized terms to identify the types of crops, livestock, products, and/or processes for which an operation is certified. For example, if a certificate says “corn,” there is no way of knowing if the operation is certified to produce and sell organic yellow corn, white corn, blue corn, sweet corn, or popcorn. NOP should develop and issue a standardized list of terms that can be used to identify the products and processes listed on certificates.

ACAs are required by § 205.406(d) to issue an “updated certificate” if “any of the information specified on the certificate of organic operation has changed” when an operation is continuing its certification. When an operation adds new fields, crops, farms, and/or facilities, this information should be reflected in an updated certificate. At the present time, some ACAs issue updated certificates annually. Instead of updating the certificate to reflect new information, letters of compliance are issued by others. This is a cumbersome process, since buyers need to have certificates on file from their suppliers. Certificates, not letters from ACAs, provide legal proof of compliance.

B. Electronic Data Management

In addition to the concerns about information on certificates, ACAs are required to make information available to the public concerning the operations they certify and to submit an annual report to the NOP listing all operations it has certified in the preceding year. There is a need and an opportunity to reduce this regulatory burden while expanding and improving the level of information specified on organic certificates.

The NOP has expressed interest in establishing a database whereby all ACAs would issue certificates of NOP compliance from their own offices. Certificates would be issued and updated in real time. Certificate information fields and terminology would be standardized, yet ACAs would retain control of all certificates they issue through pass code protected access. Each certificate would continue to display the name and address of the ACA, along with the ACA’s logo (optional).

The database would provide ACAs the ability to update certificates as information pertaining to certified operations changes. The need for annual reports of all certified operations would be eliminated, since the information would be submitted to the NOP daily. The information entered into the database, or information displayed in select fields, would be readily available to the public, allowing ACAs to easily comply with the requirements of §205.504(b)(5).

Having comprehensive certificate information available to the public will facilitate trade and enhance enforcement capabilities. Potential buyers will be able to see exactly who is certified at any given time. The database could also show the products produced, region, and additional information not currently required on certificates. Surrendered, suspended, and/or revoked certificates can be indicated as such in real time, addressing concerns about the lack of expiration dates on certificates.

Some ACAs attach addendums to master certificates, listing the specific categories of crops or products for which the operation is certified. If pages are attached in this manner, there is no way of knowing if all pages are attached unless the certificate and all attached pages state the total number of pages (e.g. page 2 of 3). With an electronic data management system, all certified crops and/or products can be listed in a comprehensive manner.

A database of all NOP compliant operations which shows the specific types of products produced by each operation will help address concerns about commercial availability of organic seeds and minor ingredients. Buyers of seeds and minor ingredients will be able to go on line to source the items they seek from organic suppliers. Inspectors, certifiers, and regulatory officials will be able to easily verify if seeds and minor ingredients are commercially available from organic suppliers by checking the database.

Most ACAs already have databases to manage information pertaining to the operations they certify. If an NOP database is to be constructed, it must be designed to allow for the upload of data from existing databases. If not, ACAs will have to duplicate data entry. This would constitute an unfair regulatory burden and serve as an unfunded mandate. It would also create resistance to the NOP database from its inception. ACAs will also need to be provided training and support services to assure that the database is used correctly and uniformly.

C. Regulatory Framework

“Certificate of organic operation” is not defined in § 205.2, but is referenced in the definition of “certification or certified”:

§ 205.2 Terms defined.

Certification or certified. A determination made by a certifying agent that a production or handling operation is in compliance with the Act and the regulations in this part, which is documented by a certificate of organic operation.

The minimum information required to appear on certificates of organic operation is specified in § 205.404(b):

§ 205.404 Granting certification.

(a) Within a reasonable time after completion of the initial on-site inspection, a certifying agent must review the on-site inspection report, the results of any analyses for substances conducted, and any additional information requested from or supplied by the applicant. If the certifying agent determines that the organic system plan and all procedures and activities of the applicant's operation are in compliance with the requirements of this part and that the applicant is able to conduct operations in accordance with the plan, the agent shall grant certification. The certification may include requirements for the correction of minor noncompliances within a specified time period as a condition of continued certification.

(b) The certifying agent must issue a certificate of organic operation which specifies the:

- (1) Name and address of the certified operation;
- (2) Effective date of certification;
- (3) Categories of organic operation, including crops, wild crops, livestock, or processed products produced by the certified operation; and
- (4) Name, address, and telephone number of the certifying agent.

(c) Once certified, a production or handling operation's organic certification continues in effect until surrendered by the organic operation or suspended or revoked by the certifying agent, the State organic program's governing State official, or the Administrator.

§ 205.406(b) and (d) discuss the issuance of updated certificates:

§ 205.406 Continuation of certification.

(b) Following the receipt of the information specified in paragraph (a) of this section, the certifying agent shall within a reasonable time arrange and conduct an on-site inspection of the certified operation pursuant to § 205.403: Except, That, when it is impossible for the certifying agent to conduct the annual on-site inspection following receipt of the certified operation's annual update of information, the certifying agent may allow continuation of certification and issue an updated certificate of organic operation on the basis of the information submitted and the most recent on-site inspection conducted during the previous 12 months: Provided, That, the annual on-site inspection, required pursuant to § 205.403, is conducted within the first 6 months following the certified operation's scheduled date of annual update.

(d) If the certifying agent determines that the certified operation is complying with the Act and the regulations in this part and that any of the information specified on the certificate of organic operation has changed, the certifying agent must issue an updated certificate of organic operation pursuant to § 205.404(b).

§ 205.501 requires ACAs to maintain certification records and make them available to the NOP or SOP; maintain confidentiality regarding certain business information; accept certification decisions of all other ACAs; and annually submit to the NOP a list of all certified operations;

§ 205.501 General requirements for accreditation.

(a) A private or governmental entity accredited as a certifying agent under this subpart must:

(9) Maintain all records pursuant to § 205.510(b) and make all such records available for inspection and copying during normal business hours by authorized representatives of the Secretary and the applicable State organic program's governing State official;

(10) Maintain strict confidentiality with respect to its clients under the applicable organic certification program and not disclose to third parties (with the exception of the Secretary or the applicable State organic program's governing State official or their authorized representatives) any business-related information concerning any client obtained while implementing the regulations in this part, except as provided for in § 205.504(b)(5);

(13) Accept the certification decisions made by another certifying agent accredited or accepted by USDA pursuant to § 205.500;

(15) Submit to the Administrator a copy of:

(i) Any notice of denial of certification issued pursuant to § 205.405, notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation sent pursuant to § 205.662 simultaneously with its issuance and

(ii) A list, on January 2 of each year, including the name, address, and telephone number of each operation granted certification during the preceding year;

§ 205.504 requires ACAs to submit extensive information to the NOP, including the policies and procedures used to make information about certified operations available to members of the public:

§ 205.504 Evidence of expertise and ability.

A private or governmental entity seeking accreditation as a certifying agent must submit the following documents and information to demonstrate its expertise in organic production or handling techniques; its ability to fully comply with and implement the organic certification program established in §§ 205.100 and 205.101, §§ 205.201 through 205.203, §§ 205.300 through 205.303, §§ 205.400 through 205.406, and §§ 205.661 and 205.662; and its ability to comply with the requirements for accreditation set forth in § 205.501:

(b) Administrative policies and procedures.

(5) A copy of the procedures to be used, including any fees to be assessed, for making the following information available to any member of the public upon request:

- (i) Certification certificates issued during the current and 3 preceding calendar years;
- (ii) A list of producers and handlers whose operations it has certified, including for each the name of the operation, type(s) of operation, products produced, and the effective date of the certification, during the current and 3 preceding calendar years;
- (iii) The results of laboratory analyses for residues of pesticides and other prohibited substances conducted during the current and 3 preceding calendar years; and

(iv) Other business information as permitted in writing by the producer or handler;

(d) Current certification activities. An applicant who currently certifies production or handling operations must submit:

- (1) A list of all production and handling operations currently certified by the applicant;

Recommendation

The NOSB recommends that NOP implement policies and procedures to expand the information required on certificates of organic operation; standardize the terminology used on certificates; provide consistency in the amount and type of information provided; and reduce regulatory burdens imposed on accredited certifying agents.

The NOSB recommends that the NOP take the following steps to accomplish the objectives stated above:

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- 15) Design the database to allow for the upload of data from existing ACA databases; and
- 16) Provide ACA training and support services to assure that the database is implemented and used correctly and uniformly.

Board vote

11 yes, 0 no, 2 abstain, 1 absent

Minority opinion

None.

Conclusion

The NOSB Certification, Accreditation, and Compliance Committee recommends that the NOP implement policy changes to provide comprehensive and accurate information on certificates which will bring consistency to the certification process; facilitate commerce of organic products; and improve compliance and enforcement capabilities. The CAC further recommends the NOP institute a database to manage certificate information, thereby reducing the regulatory burden placed on certifying agents and streamlining the information they are required to provide to the public and to the NOP.