



Accredited Certifiers Association, Inc.

*Accredited certifying agents working together to ensure
the integrity of organic certification in the United States*

October 16, 2014

Miles McEvoy, Deputy Administrator
National Organic Program
U.S. Department of Agriculture
Room 2646-So. (Stop 0268)
1400 Independence Avenue SW
Washington, DC 20250

Dear Miles,

On January 22, 2014, NOP Instruction 2605 Reinstating Suspended Organic Operations was issued and subsequently discussed at the NOP annual certifier training. At that time certifiers expressed concern that Section 3 stated a policy which is inconsistent with how certifiers have been approving the certification for reinstated clients: "Agricultural products that are produced and/or handled during the time between suspension and reinstatement may not be sold, labeled, or represented as "100% organic," "organic," or "made with organic (specified ingredients or food group(s)).""

Based on the ACA Board discussion with the National Organic Program staff in July, the ACA formed a Working Group to discuss the impact suspension of an operation has on products produced during the suspension period. During the Working Group discussion of this topic additional issues were also discussed and are noted below.

There are various reasons to issue a Notice of Suspension, such as crop contamination issues, or as is very common, administrative issues, such as non-payment of certification fees, or lack of submission of annual update.

Dependent upon the reason for a Notice of Suspension, in particular for administrative issues that are correctable and have not compromised organic products, our members believe that:

- when a suspended operation has been under the monitoring of a certifying agent during the suspension period,
- has applied for reinstatement,
- has successfully resolved all prior noncompliances,
- when an on-site inspection verifies the crops were grown without the use of prohibited substances, and no integrity risks were identified, *and*
- the operation has been reinstated/certified, the crops produced during the reinstatement process are eligible for sale as organic.

ACAs believe that in situations where organic production/handling requirements have been compromised, for example, if a crop certification is suspended due to application of a prohibited substance, then that crop/field must be suspended for three years. The operator may correct

the *cause* of the application and might be inspected prior to harvest and have adequate records, etc., but the impact of the suspension continues during the suspension period, at least until the end of the 36-month time frame.

Agricultural products that are produced and/or handled once an operation is suspended may not be sold, labeled, or represented as “100% organic,” “organic,” or “made with organic (specified ingredients or food group(s))” during the time between suspension and reinstatement. Operations that sell noncompliant products or who produce and sell products as organic during suspension are not eligible for reinstatement. An operation may only sell products as organic during the suspension period if they are produced in compliance with the act and the operation meets the criteria for an exempt or excluded operation, such as the sale of packaged products, previously produced in compliance.

Provided That, crops and/or products have been inspected prior to harvest, records are adequate, the product is tracked and other certification requirements have been addressed an operation may be reinstated and be allowed to represent as organic, production that is recommended for reinstatement by the certifier. Requests for reinstatement must include clear reporting about any and all organic sales during the suspension period including the source and when the products were produced.

There can be exceptions to the *inspected before harvest* requirement for some harvest time-sensitive crops such as forages. The crop/commodity may be harvested, but must be stored on site, segregated from other crops, with complete records maintained. At inspection there will be a review of other fields of the same type crop and a review of the buffers of the harvested field.

For livestock operations, upon receipt of an application of reinstatement from a suspended livestock producer, an inspection of the operation, and verification that the operator corrected the noncompliance and can document continued organic management, ACAs would recommend reinstatement and the NOP has allowed the reinstatement.

During the suspension period livestock products, such as meat, eggs or milk, must be diverted to a conventional market or otherwise not sold as organic even though animals are continuing to be managed organically. Upon reinstatement livestock products are eligible to be sold, labeled, or represented as organic.

To prohibit the sale of a crop produced as noted above amounts to forcing suspended operations to go through a “conversion year” in which they are inspected and during which ACAs are expected to grant operations certification, but during which no actual products may be sold. This has major consequences for operations that are suspended for mere paperwork violations; those operations could be granted reinstatement, pay for inspection, and pay certification fees, but be unable to sell the crops grown during that cycle as organic even though they comply with the rule. We do not believe this is a sensible practice.

The ACA requests that the National Organic Program revise the NOP 2605 Reinstatement Policy to read:

Agricultural products that are produced and/or handled during the time between suspension and reinstatement may ~~not~~ be sold, labeled, or represented as “100% organic,” “organic,” or “made with organic (specified ingredients or food group(s))”

upon completion of the reinstatement and certification process, Provided That, crops have been inspected prior to harvest, records are adequate, the product is tracked and other certification requirements have been addressed.

Additional topics discussed

- **Other aspects of the Suspension/Reinstatement Process**

- ~ Historically, ACAs have not always addressed administrative issues with the issuance of a noncompliance or other adverse action, as they were encouraging the operator to submit payment of fee or paperwork. Notices of suspension may have been issued, but for very short periods of time such as 30 days, or they may not designate a minimum suspension timeframe. As administrative issues are generally a preventable and correctable noncompliance, it is believed that the best practice is to issue a noncompliance followed by a notice of proposed suspension, which then provides the opportunity for the operator to rebut/appeal.
- ~ Suspensions do require operators to follow the reinstatement process, including inspection and NOP review, so any suspension will typically affect operations' organic sales for a significant period of time.
- ~ §205.662(c) permits suspension of a portion of an operation. There is agreement that a formal reinstatement process is required to bring the suspended portion back into certification.
- ~ ACAs must accept an application for reinstatement by a suspended operation. There is no time limit for a reinstatement application. Although ACAs agree that a longer interval between suspension and application for reinstatement can be problematic for issues such as record keeping, if the producer applies for reinstatement and has corrected the noncompliance, the reinstatement process needs to be conducted.

- **Grower Group Adverse Actions**

The 2002 NOSB recommendation on grower groups states: "Grower groups are different from other entities seeking certification in that they are comprised of numerous producers who are certified as one entity, rather than being certified as individual sole proprietors."

In Grower Groups the Internal Control System (ICS) supervises the sub-units and issues sanctions. The ACA is assessing compliance of the Grower Group as a single entity and the ICS much the same way an ACA assesses compliance of single farmer with multiple fields.

§205.400(f)(2) requires notification of the ACA of any change in the operation. If the ICS sanctions or removes a sub-unit, the ACA must be notified. The ACA can issue a noncompliance to the Grower Group for issues related to a sub-unit, but would not necessarily be required to propose suspension of the sub-unit, as the certificate covers the Grower Group entity. The sub-unit and associated fields would typically be taken off the organic system plan and certificate, based on direction from the Grower Group.

Alternately, the Grower Group may choose not to mitigate the noncompliance identified by the ACA. This would result in the ACA proposing an adverse action, which may be appealed.

- **Surrendered/Suspended Operation Marketing of Product Produced with Valid Certificate**

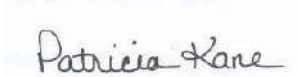
ACAs are frequently asked whether an operation which is suspended (or surrendered) and is not applying for reinstatement, can sell product that was produced during the valid certification period and placed in final (impermeable) packaging. An operation which only sells previously packaged product is considered excluded under 205.101(b).

The ACA of the surrendered/suspended operation may verify (through production records, etc.) that the product was produced during the time of the valid certificate, but it will be up to the ACA of the purchaser to determine acceptance of the documentation. ACAs would be less alarmed about providing/accepting this verification if the operation surrendered certification or if the noncompliance leading to suspension was not directly related to the product to be sold.

It was noted during discussion that NOP has allowed the sale of harvested forage produced under a valid certificate, from a suspended livestock operation that requested reinstatement.

Thank you for the opportunity to provide information on the suspension/reinstatement process.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Kane". The signature is written in black ink on a light-colored background.

Patricia Kane, Coordinator