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June 3, 2011

Miles McEvoy
Deputy Administrator
National Organic Program, USDA-AMS
1400 Independence Ave SW
Room 2646-S, Stop 0268
Washington, DC 20250-0268

Re: NOP 2604 Responsibilities of Certified Operations Changing Certifying Agents and Label Use-Up Policy

Dear Miles:

As per our discussion with you on our Board of Directors conference call in March, ACA is submitting a request for a change to the Label Use-Up policy in the NOP 2604 Instruction Document.

ACA initiated a Working Group of members concerned with the NOP Label Use-Up Policy and they developed the attached recommendations, which are supported by our members.

If you have any questions regarding our recommendations, please contact me.

Sincerely,

Patricia Kane
ACA Coordinator
patriciakane@accreditedcertifiers.org

Accredited Certifiers Association
Recommendation to NOP for change in the Label Use-Up Policy
6.2011

Request for NOP Policy Reconsideration

NOP 2604 Responsibilities of Certified Operations Changing Certifying Agents

Background

Effective October 7, 2010, the NOP Handbook makes the following statement in the Instruction Document NOP 2604 “Responsibilities of Certified Operations Changing Certifying Agents,”

4.4 For voluntary changes of certifying agent:

4.4.1 Certified operations that change ACAs voluntarily may not use up existing supplies of labels which identify their prior ACA on products they produce or handle.

The Accredited Certifiers Association acknowledges this is a sincere effort to protect consumers by ensuring that the current certification agency of the certified product is listed on the label. When a label has the current certification agency listed, questions of the product’s integrity can be directed to the certification agency responsible for the certification decision.

Issue

This requirement results in inefficiencies and waste that make the overall program more burdensome to operations and the environment. The requirement does not increase consumer protection.

Organic businesses should be allowed to change certification agencies when an agency is not meeting their service needs. Some certification agencies choose not to offer international certification, for example, or cannot provide service to a business out of state. These and others are legitimate reasons for changing certification agencies that should not be made more expensive or burdensome for organic businesses.

There are clear costs to a limited label-use up timeline. Physical resources are wasted, which is antithetical to the spirit of the organic regulations, as well as expensive for businesses of all sizes. Additionally, where an operation might be changing certification agencies amicably, limiting their ability to use up labels printed with the previous certification agency’s name creates an unnecessary antagonistic relationship.

Finally, consumer protection is a priority for the organic community. However, consumers aren’t necessarily getting current information from retail labels even today, due to the marketplace reality of stream of commerce. Many products are in the marketplace long after an operation has changed certification agencies or ceased certification entirely. For example, a jar of peanut butter might sit on the shelf for months after an operation finalizes a change to another certification agency. The prior certification agency may even today receive a call about that product and operation, and a consumer might find themselves interacting with a certification agency that does not have a relationship with the certified operation anymore.

Proposed Solution

In order to support organic businesses, certification agencies are willing to work together to ease the burden of voluntary certification agency changes. There may also be situations when a certifying agency chooses not to agree to the use up of labels.

Involuntary changes in certification agency – being outside the control or ability to plan of the certified operations – should have no greater impact on organic businesses than voluntary changes.

The ACA proposes the following changes (in red) to the NOP Handbook Policy 2604:

“Responsibilities of Certified Operations Changing Certifying Agents,”

4.4 For voluntary changes of certifying agent:

4.4.1 Certified operations that change ACAs voluntarily **may use** up existing supplies of labels which identify their prior ACA on products they produce or handle **for a period of time agreed upon in writing between the certified operation, and the previous and new certification agency, not to exceed one year.**

The label use up agreement identifies the previous certifier as the primary contact (as their name will be on the product label). The previous certifier would ensure all inquiries are directed to the new certifier. The new certifier assumes all responsibility for investigating consumer concerns and compliance with the National Organic Program requirements. Due to stream of commerce, the previous certifier may also become involved in a complaint investigation and assume some accountability if it is determined non-compliant product was labeled while the operation was certified under their accreditation.

4.5 For certified operations who change ACAs due to loss of a ACAs accreditation:

4.5.4 Certified operations that change ACAs due to their ACA going out of business **may use existing supplies of labels during the re-certification process, not to exceed one year** beyond the date that the ACA discontinued service.

Definitions:

Label Use-up: A label is “used” when the product it contains or is applied to is sold from the organic entity to the next buyer. A label that lists a former certification agency may not be designed, printed or applied after the agreed upon label use-up deadline. It is understood that a product which is labeled with a former certification agency’s name may be stored by distributors, traders, or retailers, or appear on retail shelves beyond the final date of the agreed upon label use-up deadline.