

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

Date: 11-11-06

Subject: Expiration Dates on Certificates of Organic Operation

Chair: Kevin O'Rell

Recommendation

The NOSB hereby recommends to the NOP the following:

Rulemaking Action: XXX

Guidance Statement: _____

Other: _____

Statement of the Recommendation (including Recount of Vote):

The NOSB recommends that the NOP implement a rule change for **205.404 Granting certification** and **205.406 Continuation of certification** (as stated in attachment) to require expiration dates on certificates which will improve compliance and enforcement capabilities.

Board Vote **Motion:** Andrea Caroe **Second:** Nancy Ostuguy

13 – Yes 1- No 0 – Abstain 0 – Absent

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

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 recommends that the NOP implement rule change to allow for comprehensive information on certificates and to facilitate authentication of Certificates of Compliance.

Response by the NOP:

**National Organic Standards Board
Certification, Accreditation, and Compliance Committee
October 19, 2006**

Expiration Dates on Certificates of Organic Operations

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 rule change to allow for comprehensive information on certificates and to facilitate authentication of Certificates of Compliance.

As indicated below, there is a need to provide expiration dates on certificates to improve compliance and enforcement capabilities.

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.

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.

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

The NOP has expressed interest in establishing a database whereby all ACAs would issue certificates of NOP compliance from their own offices. The development of this tool has met with unavoidable obstacles. Until such time that a master database is available, ACAs must be able to control the use of Certificate of Compliance. By using expiration dates, the certifiers can ensure that certified entities maintain the requirements of the regulation for all products marketed under the organic program.

C. Extensions

For various reasons, an ACA may not be able to provide for a completed evaluation of a certified entity prior to the expiration of the last certification period. The regulation allows for the granting of a grace period to accommodate monitoring of the entity 205.406. Since the inclusion of expiration dates on the Certificates of Compliance will prevent the entity from continuing to market their organic products, a method must be available to extend these Certificates for a finite period of time.

D. 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;

Recommendation

The NOSB Certification, Accreditation, and Compliance (CAC) Committee recommends that NOP implement the following rule change:

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 **and expiration date of the certificate**;

(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, suspended or revoked by the certifying agent, the State organic program's governing State official, or the Administrator.

§ 205.406 Continuation of certification.

(a) To continue certification, a certified operation must annually pay the certification fees and submit the following information, as applicable, to the certifying agent:

(1) An updated organic production or handling system plan which includes:

(i) A summary statement, supported by documentation, detailing any deviations from, changes to, modifications to, or other amendments made to the previous year's organic system plan during the previous year; and

(ii) Any additions or deletions to the previous year's organic system plan, intended to be undertaken in the coming year, detailed pursuant to § 205.200;

(2) Any additions to or deletions from the information required pursuant to § 205.401(b);

(3) An update on the correction of minor noncompliances previously identified by the certifying agent as requiring correction for continued certification; and

(4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.

(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 **a letter of continuation for the existing certificate for a specified period of time**: 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. **The updated expiration date for operations who maintain their organic certification shall reflect the original month of organic certification issuance as the beginning of the new year, regardless of the date of further inspections.**

(c) If the certifying agent has reason to believe, based on the on-site inspection and a review of the information specified in § 205.404, that a certified operation is not complying with the requirements of the Act and the regulations in this part, the certifying agent shall provide a written notification of noncompliance to the operation in accordance with § 205.662.

(d) If the certifying agent determines that the certified operation is complying with the Act and the regulations in this part the certifying agent must issue an updated certificate of organic operation pursuant to § 205.404(b). **The expiration date for operations that experience a lapse in certification for any of the reasons cited in §**

205.404(c) will, upon meeting the terms for recertification in § 205.662(f), be issued a new certificate of organic operation, using the new date of issuance as the beginning of the certification year.

Committee vote

Motion made by Mike Lacy and seconded by Kevin Orell

7 – Yes 0 – No 0 – Abstain 0 – Absent

Minority opinion

None

Conclusion

The NOSB Certification, Accreditation, and Compliance Committee recommends that the NOP implement rule change to require expiration dates on certificates which will improve compliance and enforcement capabilities.

Board vote

Motion made by Andrea Caroe and seconded by Nancy Ostiguy

13 – Yes 1 – No 0 – Abstain 0 – Absent