



Instruction

Responsibilities of Certified Operations Changing Certifying Agents

1. Purpose

This instruction document establishes U.S. Department of Agriculture (USDA) National Organic Program (NOP) guidance and procedure for certified operations and accredited certifying agents (ACA) when certified operations change to a new ACA. This instruction is issued under 7 CFR § 205.501 (a)(21)

2. Scope

This procedure applies to all certifying agents and operations certified to the USDA organic regulations, 7 CFR § 205.

3. Background

Pursuant to § 205.401 of the USDA organic regulations, in all situations where a certified operation wishes to change from their existing certifying agent to a new certifying agent, the certified operation must complete an application and submit a complete organic system plan (OSP) to the new certifying agent. These requirements apply whether the change of certifying agent is a result of a business decision or the result of the current certifier losing or surrendering its accreditation.

4. Policy

4.1 General

4.1.1 Certification under USDA organic regulations is not transferrable between certifying agents. Certifying agents may not sell or otherwise transfer certified operation files or certificates to another certifying agent.

4.1.2 Certification and certificates issued to certified operations are not transferrable to new owners in cases of mergers, acquisitions, or other transfers of ownership of the certified operation. When there is a change in ownership of a certified operation, the certified operation must apply for and receive new certification from a certifying agent prior to selling, labeling, or representing products as organic.



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- 4.1.3** When a certified operation wishes to change from their existing certifying agent to a new certifying agent, the certified operation must complete an application and submit a complete organic system plan (OSP) to the new certifying agent.
- 4.1.4** Prior to granting certification, the new certifying agent must conduct an NOP compliance review of the certified operation's OSP and a full on-site inspection to verify compliance with the USDA organic regulations.
- 4.1.5** When changing certifying agents, the certified operation must either maintain the prior certification according to the USDA organic regulations or surrender their prior certification in writing. Certified operations that are changing certifying agents and intend to continue to produce or sell products as organic must maintain their current certification until they have been granted certification by the new certifying agent.
- 4.1.6** If a certified operation applies for certification with a new certifying agent but does not maintain or surrender its prior certification, then the operation may be issued a notice of noncompliance or proposed suspension or revocation, also known as an adverse action notice, by its previous certifying agent. In such a case, the certified operation is still bound by the notice of noncompliance or proposed adverse actions of the prior certifying agent.
- 4.1.7** If the prior certifying agent issues a notice of suspension or revocation for any noncompliance to the USDA organic regulations, the certified operation must immediately cease the sale, labeling, and representation of products as organic. Reinstatement of suspended operations is granted by the USDA pursuant to §205.662(f)(1). Revoked operations are ineligible to receive certification for a period of 5 years pursuant to §205.662(f)(2),
- 4.1.8** Certified operations that do not maintain current organic certification status may be issued a notice of noncompliance or proposed suspension or revocation by a certifying agent, a state organic program or the USDA pursuant to §§205.660 and 205.662.
- 4.2 For voluntary changes of certifying agents:**
Certified operations that change certifying agents voluntarily and have labels which identify their prior certifying agent on products they produce or handle, may not use up existing supplies of labels. New labels must be used immediately which identify the new certifying agent.
- 4.3 For certified operations who change certifying agents due to loss of a certifying agent's accreditation:**
- 4.3.1** Operations certified by a certifying agent that goes out of business or loses its accreditation for any reason must apply for certification with another certifying agent within 60 days of the date of surrender, suspension, or revocation of accreditation of their certifying agent.



- 4.3.2** If a certified operation does not find a new certifying agent within 60 days, the USDA may initiate proposed adverse actions for failure to maintain certification under the USDA organic regulations.

Certified operations that change certifying agents due to a certifying agent going out of business or losing its accreditation may use existing supplies of labels identifying the prior certifying agent for no more than 90 days beyond the date that the certifying agent discontinued service or lost accreditation.

- 4.3.3** Certified operations that change certifying agents will be treated as new applicants by the new certifying agent. Certifying agents who receive applications for certification from a certified operation affected by the loss of accreditation of their prior certifying agent may not grant ongoing certification on the basis of prior inspections or decisions by the prior certifying agent.

5. Procedure

5.1 To change accredited certifying agents, certified organic operations must:

- 5.1.1** Submit an application for certification to another certifying agent as a new applicant.
- 5.1.2** Submit a complete OSP for the scope(s) of certification requested.
- 5.1.3** Pay fees to the new certifying agent according to the fee schedule approved by the USDA.
- 5.1.4** Maintain their current certification, including submitting annual updates, allowing timely inspections, and paying all required fees to the current certifying agent. In order to produce or sell products as organic, operations must maintain their current certification until the certification process for the new certifying agent is complete, and a new certificate has been issued.
- 5.1.5** Send their prior certificate and a written notice of certification surrender to their prior certifying agent, if the operation is voluntarily changing certifying agents, or to the USDA, if the operation is changing certifying agents due to a certifying agent's cessation of certification services or loss of accreditation. Operations should surrender their organic certifications only after the new certification process is complete.

5.2 To receive applications from operations currently or previously certified by another accredited certifying agent, the new certifying agent must:

- 5.2.1** Require the applicant to submit a complete application and OSP as a new applicant for certification.



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- 5.2.2** Request information regarding current certification status, including any outstanding notices of noncompliance, proposed adverse actions, or adverse actions. Certification may not proceed until outstanding noncompliances, proposed adverse actions and adverse actions are resolved. If an operation is suspended, then eligibility for reinstatement must have been issued from the USDA.
- 5.2.3** Notify the applicant of their obligation to maintain their current certification throughout the new certification process in order to sell, label or represent products as organic during the process of changing to the new certifying agent.
- 5.2.4** Charge fees as approved by the USDA.
- 5.2.5** Conduct a complete review of the application and OSP for compliance with the USDA organic regulations.
- 5.2.6** Schedule and conduct an on-site inspection pursuant to § 205.403. An inspection is required prior to the issuance of a new certificate.
- 5.2.7** Issue a new certificate only after the applicant is determined to be in compliance with the USDA organic regulations.
- 5.2.8** Prohibit the new client from using labels which do not correctly identify the certifying agent of the finished product beyond the tolerances allowed in this instruction.

6. Records

- 6.1** Certifying agents will maintain records according to § 205.510(b).
- 6.2** Certified operations will maintain records according to § 205.400(d).

7. References

USDA organic regulations (as amended to date)

7 CFR § 205.205 Subpart E – Certification

7 CFR § 205.205 Subpart F – Accreditation

7 CFR § 205.400 General Requirements for certification....

(d) Maintain all records applicable to the organic operation for not less than 5 years...

7 CFR § 205.401 Application for certification.

7 CFR § 205.403 On-site inspections.



7 CFR § 205.510

(b) Recordkeeping.

7 CFR § 205.660 Compliance, General.

7 CFR § 205.662 Noncompliance procedure for certified operations.

(f) Eligibility.

Approved on June 12, 2012