NOP 2605 Effective Date: January 22, 2014 Page 1 of 8

# Instruction **Reinstating Suspended Organic Operations**

## 1. **Purpose and Scope**

This instruction provides procedures for USDA-accredited certifying agents (certifiers) and suspended organic operations to request certification reinstatement. It also provides procedures and decision-making criteria for National Organic Program (NOP) officials when considering requests for reinstatement. These procedures apply to all certifiers as well as organic operations that are subject to the USDA organic regulations at <u>7 CFR Part 205</u>.

### 2. **Background**

7 CFR § 205.662(f) describes how an operation that has been suspended may request reinstatement of its certification. The NOP reviews such requests, and then approves or denies them, based on evidence that an operation has corrected all previously cited noncompliances and otherwise fully complies with the regulations.

## **3. Policy and Procedure**

Once an organic operation's certification has been suspended, only the NOP has the authority to approve its reinstatement. Certifiers may not approve or deny certification of a suspended operation without the NOP's written approval. Suspended operations must complete a new application for certification with a certifier before requesting reinstatement in order to demonstrate compliance with the regulations.

The suspended operation can request reinstatement of its organic certification either directly to the NOP, which acts on behalf of the Secretary of Agriculture, or to its certifier, who will forward the request to the NOP. To request reinstatement, a suspended operation must submit a written request for reinstatement as described in 7 CFR § 205.662(f), and explained in section 3.3 below. The reinstatement request must include evidence showing that all of the operation's noncompliances have been corrected, and should include copies of the original Notices of Noncompliance, Proposed Suspension, and Suspension, as well as a copy of the full onsite inspection report of the operation, conducted within the three months preceding the reinstatement request. These steps are outlined further below.

If the operation submits the reinstatement request to the certifier, the certifier will send the request to the NOP along with evidence from the certification process. When forwarding a request for reinstatement, the certifier's cover letter to the NOP must state whether the onsite inspection and review showed that the operation had corrected all previously cited noncompliances and was otherwise in full compliance with the regulations. If the operation's reinstatement request includes documented evidence of full compliance, then the NOP will



NOP 2605 Effective Date: January 22, 2014 Page 2 of 8

approve reinstatement. If not, then the NOP will deny the reinstatement request, and the suspension will remain in effect.

If the NOP approves the reinstatement, it will notify the operation and its certifier that the operation is certified. The certifier will then issue a new organic certificate to the operation. The reinstatement of certification is effective once the NOP approves the reinstatement request.

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))."

## 3.1. When does the NOP typically approve a reinstatement request?

As with applications for certification, a certifier must accept any reasonable request for reinstatement within its administrative capacity. The certifier must verify that the operation: 1) meets all the requirements for organic certification; and 2) is capable of remaining in compliance with all the applicable regulatory requirements. If the certifier submits a request for reinstatement when these two criteria have not been met, the request is likely to be denied.

The NOP will typically approve a reinstatement request that includes:

- 1. A written request for reinstatement from the suspended operation;
- 2. A statement of compliance with the regulations (see Exhibit B) from the operation's certifier: and
- 3. Documented evidence from the operation's certifier demonstrating compliance with all applicable USDA organic regulations, as described in section 3.4 below.

If the NOP approves the reinstatement, the certifier is to issue a new certificate to the operation.

## 3.2. When does the NOP typically deny a reinstatement request?

If the certifier's documentation shows evidence of outstanding noncompliances, the NOP will deny the request for reinstatement, and the operation's suspension will continue.

Some operations will not be able to demonstrate full compliance during the reinstatement process. If the certifier finds evidence that the suspended operation does not comply with the regulations, then it should issue a Notice of Noncompliance to the operation in accordance with 7 CFR § 205.662(a). The Notice of Noncompliance will usually give the operation 30 days to respond with its proposed corrective actions. If the operation fails to respond to the Notice, or it responds but the certifier finds its corrective actions are insufficient, then the certifier should describe the outstanding noncompliances in its cover letter to the NOP. This letter should describe why the certifier recommends denying reinstatement of certification. See part 3.4(e) below for detailed instructions regarding noncompliant operations.

The certifier must forward all reinstatement requests to the NOP, even if it finds evidence that the operation does not comply with all of the regulations. The NOP will only approve requests

NOP 2605 Effective Date: January 22, 2014 Page 3 of 8

supported by evidence from the certifier showing that the operation is in full compliance. If the certifier detects evidence of willful violations during the reinstatement process, it should send this information to the NOP Compliance and Enforcement Division for a complaint investigation, pursuant to NOP 4001: NOP Complaint Handling Procedure. This includes evidence that an operation sold product as organic while suspended.

## 3.3. **Steps for Requesting Reinstatement by Certified Operations**

The following steps are required for reinstatement consideration. The suspended operation must:

- a) Correct all noncompliances, including those that led to the suspension, as well as any outstanding noncompliances subsequently identified by the certifier.
- b) Ensure that its organic systems plan (OSP) is complete, that the OSP complies with the regulations, and that the OSP is being implemented.
- c) Contact a certifier and submit a new application for certification. If the new certifier is different from the certifier that issued the suspension, the operator must inform the new certifier of its suspended status and the reasons for the suspension.
- d) Pay all fees required by the certifier.
- e) Complete a full onsite inspection, during which the inspector will review all relevant aspects of the operation. The inspection is to be conducted pursuant to 7 CFR § 205.403 (a)(1).
- f) Prepare a letter addressed to the Secretary of Agriculture, care of the NOP, requesting certification reinstatement. See Exhibit A for a sample letter showing the information to be included. Send the letter either to the certifier, or directly to the NOP at:

USDA, AMS, National Organic Program

1400 Independence Avenue, SW

Room 2648, Stop 0268

Washington, DC 20250

Or AIAInBox@ams.usda.gov

Shipping services that require a telephone number may use (202) 720-3252.

g) Retain all documents related to the request for reinstatement for future audit by the certifier and the NOP.

## 3.4. **Steps for Evaluating Reinstatement Applications for Certifiers**

Upon receipt of an operation's request for reinstatement, the certifier will:

- a) Conduct a compliance review of the certification application, including the OSP, to ensure that all provisions of the regulations are met.
- b) Notify the operation of any noncompliances according to 7 CFR § 205.662(a). (Any noncompliances discovered after suspension as well as any remaining noncompliances that led to the operation's suspension must be addressed.)
- c) Schedule a full onsite inspection to verify the operation's compliance with the regulations, provided that the OSP is deemed to comply. Verification of compliance includes: (1) a review of sales during the suspension period to ensure that products were not represented or sold as organic; (2) That there is a system in place that will prevent comingling of noncompliant product produced or inventoried during the suspension



## United States Department of Agriculture 1400 Independence Avenue SW Agricultural Marketing Service National Organic Program

Room 2648-South Building Washington, DC 20250

Effective Date: January 22, 2014 Page 4 of 8

NOP 2605

period. Onsite inspections should occur within the three month period prior to the NOP receiving the reinstatement request. Deviations from this procedure are to be justified and approved by the NOP.

- d) If the certifier finds evidence of a noncompliance during the application review or inspection process, then it should issue a Notice of Noncompliance to the operation. In order to be reinstated, the operation applying for reinstatement must demonstrate resolution of all noncompliances, including those that led to the suspension and any additional noncompliances identified during the reinstatement review and inspection.
- e) Prepare a signed letter to the Secretary of Agriculture, care of the NOP. There are two types of letters: one if the operation requesting reinstatement has met all the requirements of the regulations; the other if it has not.

If the certifier verifies that the operation is in full compliance, then the letter should affirmatively state that:

- The certifier has conducted an NOP compliance review of the operation's OSP;
- The review found that the OSP adequately addressed the noncompliance(s) that led to the suspension, and complies with the regulations; and
- The certifier conducted an onsite inspection of the operation and found the operation to fully comply and/or be capable of remaining in compliance with the regulations. If the certifier issued a Notice of Noncompliance to the operation as a result of the onsite inspection, and the operation submitted sufficient corrective actions, then the certifier should state this as well.

See Exhibit B for a sample letter showing the information to be included.

If the certifier did not find the operation to be able to come into full compliance with the regulations during the application process, then the letter should state that:

- The certifier has conducted an NOP compliance review of the operation's OSP;
- The review found evidence of outstanding noncompliance(s) that led to the suspension, or new noncompliance(s) that prevent certification;
- The certifier conducted an onsite inspection of the operation and found the operation unable to comply and/or be capable of remaining in compliance with the regulations. If the certifier issued a Notice of Noncompliance to the operation as a result of the onsite inspection, and the operation submitted insufficient corrective actions, then the certifier should state this as well.

Certifiers are not to issue Denials of Certification to suspended operations requesting reinstatement. Only the NOP has the authority to make reinstatement decisions.

f) Submit the letter (along with the operation's request for reinstatement), as well as the initial Notice of Noncompliance, Notice of Proposed Suspension, Notice of Suspension, and a copy of the inspection report that found the operation to be in full compliance. If the inspection report includes issues of concern, then the request for reinstatement must include other documented objective evidence to demonstrate the operation's full compliance with the regulations.

NOP 2605 Effective Date: January 22, 2014 Page 5 of 8

Retain all documents related to the request for reinstatement for future NOP audits.

## 3.5. **Steps for Evaluating Reinstatement Requests for the NOP**

Once the NOP receives a reinstatement request, it should complete the following steps within approximately 30 days, although reinstatement requests with evidence of noncompliance may take longer:

- a) Review the request for reinstatement along with the supporting documentation and contact the certifier if questions remain regarding the request. If the operation was suspended for a specific period of time, then the NOP may deny the request for reinstatement without further review until the suspension period has ended. If the certifier recommends reinstatement before completion of the suspension period, the certifier should explain to the NOP the rationale for doing so.
- b) Approve the request if:
  - All required documents have been submitted;
  - The documentation clearly demonstrates the operation has corrected previously cited noncompliances, is in compliance with the regulations and is capable of remaining in compliance; and
  - The review of the documentation does not find that the operation has an ongoing history of noncompliance indicating an inability or unwillingness to remain in compliance.
- c) If the request is approved, the NOP will remove the operation from the public list of suspended operations. The NOP will issue a letter to the operation, with a copy to the certifier, stating that the operation is certified by the certifier referenced in the request, and all documents related to the reinstatement must be retained for future audit by the NOP.
- d) If the request is denied, the NOP will issue a letter to the operation, with a copy to the certifier, stating the reasons for denying reinstatement.
- e) Review all documentation related to the reinstatement at the certifier's next onsite audit.

### 4. References

# **USDA Organic Regulations (7 CFR Part 205)**

- 7 CFR § 205.403 On-site inspections.
  - (a) On-site inspections.
    - (1) A certifying agent must conduct an initial on-site inspection of each production unit, facility, and site that produces or handles organic products and that is included in an operation for which certification is requested. ...
    - (2) (i) A certifying agent may conduct additional on-site inspections of ... certified operations to determine compliance with the Act and the regulations in this part.
- 7 CFR § 205.662 Noncompliance procedure for certified operations.
  - (a) Notification. When an inspection, review, or investigation of a certified operation by a certifying agent or State organic program's governing official reveals any noncompliance



United States Department of Agriculture Agricultural Marketing Service National Organic Program 1400 Independence Avenue SW Room 2648-South Building Washington, DC 20250 NOP 2605 Effective Date: January 22, 2014 Page 6 of 8

Authorized Distribution: Public

with the Act or regulations in this part, a written notification of noncompliance shall be sent to the certified operation.

## (f) Eligibility.

- (1) A certified operation whose certification has been suspended under this section may at any time, unless otherwise stated in the notification of suspension, submit a request to the Secretary for reinstatement of its certification. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and the regulations in this part.
- (2) A certified operation or a person responsibly connected with an operation whose certification has been revoked will be ineligible to receive certification for a period of 5 years following the date of such revocation, *Except*, That, the Secretary may, when in the best interest of the certification program, reduce or eliminate the period of ineligibility.

Approved on January 22, 2014

1400 Independence Avenue SW Room 2648-South Building Washington, DC 20250 NOP 2605 Effective Date: January 22, 2014 Page 7 of 8

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# **Exhibit A: Sample Letter from Suspended Operation Requesting Reinstatement**

[Date]

Secretary of Agriculture c/o USDA, AMS, National Organic Program 1400 Independence Avenue SW Room 2648, Stop 0268 Washington, DC 20250

Dear Secretary Vilsack:

We formally request reinstatement of organic certification of our [organic farm or handling facility] pursuant to § 205.662(f)(1) of the USDA organic regulations.

On [date of suspension], [name of certifier] suspended our certification for [briefly state reason(s) for suspension]. Those noncompliances have been corrected, and on [date of inspection], [name of current or new certifier] conducted a full onsite inspection to verify our compliance with the regulations.

We have asked [name of certifier] to provide you with the necessary supporting documentation. We would appreciate your prompt consideration of this request for reinstatement.

Sincerely,

/Signature/

[Name of person responsible for program]
[Title]
[Name of company, if any]

1400 Independence Avenue SW Room 2648-South Building Washington, DC 20250 NOP 2605 Effective Date: January 22, 2014 Page 8 of 8

# **Exhibit B: Sample Letter from Certifier Requesting Reinstatement of Suspended Operation**

[Date]

Secretary of Agriculture c/o USDA, AMS, National Organic Program 1400 Independence Avenue SW Room 2648, Stop 0268 Washington, DC 20250

Dear Secretary Vilsack:

This letter provides the necessary statements of compliance to support a reinstatement request from [name of organic operation] to reinstate its USDA organic certification pursuant to § 205.662(f)(1) of the USDA organic regulations. Enclosed is a letter from our client requesting reinstatement.

On [date of suspension], [name of certifier] suspended [name of operation] for [briefly state reason(s) for suspension]. Since that time, [name of operation] has corrected the noncompliances identified in the notice of suspension and has requested reinstatement. In order to verify our [client's or applicant's] eligibility for certification, we have:

- 1. Reviewed the [client's or applicant's] proposed corrective actions and found that all identified noncompliances have been fully addressed;
- 2. Conducted a complete review of their organic system plan (OSP) and found it to be in compliance with the regulations; and
- 3. Conducted a full onsite inspection of the operation on [date of inspection] and determined that [name of operation] has fully implemented their OSP and is capable of remaining in compliance with the regulations.

If you have questions or other concerns regarding their eligibility for reinstatement, please contact [name of certifier contact] at [phone number] or by email at [email address].

Sincerely,

/Signature/

[Name of certifier representative]
[Title]
[Name of certifier]

Enclosure