

## Schurkamp, Lynnea - AMS

---

**From:** Person, MichelleM (OCIO) - AMS  
**Sent:** Tuesday, October 10, 2017 4:14 PM  
**To:** Tucker, Jennifer - AMS  
**Subject:** Accepted: Media - WashPo, Whoriskey: Aurora investigation

## Schurkamp, Lynnea - AMS

---

**From:** Glasgow, David - AMS  
**Sent:** Tuesday, October 10, 2017 4:26 PM  
**To:** Tucker, Jennifer - AMS  
**Subject:** Accepted: Media - WashPo, Whoriskey: Aurora investigation

## Schurkamp, Lynnea - AMS

---

**From:** Rakola, Betsy - AMS  
**Sent:** Tuesday, October 10, 2017 4:47 PM  
**To:** Tucker, Jennifer - AMS  
**Subject:** Accepted: Media - WashPo, Whoriskey: Aurora investigation

## Schurkamp, Lynnea - AMS

---

**From:** Gebault King, ReneeA - AMS  
**Sent:** Wednesday, October 11, 2017 7:28 AM  
**To:** Tucker, Jennifer - AMS  
**Subject:** Accepted: Media - WashPo, Whoriskey: Aurora investigation

## Schurkamp, Lynnea - AMS

---

**From:** Wilkins, Nadine - AMS on behalf of Glasgow, David - AMS  
**Sent:** Wednesday, October 11, 2017 7:45 AM  
**To:** Tucker, Jennifer - AMS  
**Subject:** Accepted: Media - WashPo, Whoriskey: Aurora investigation

## Schurkamp, Lynnea - AMS

---

**From:** Ohagan, Christopher - AMS </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=557E704E00014EFA8142536345C2093A-OHAGAN, CHRIS2CB42B6>  
**Sent:** Tuesday, October 10, 2017 8:56 AM  
**To:** Stewart, Dana - AMS; Allen, William - AMS; AMS - Washington DC OA Pub Aff; Betts, Marlene - AMS; Bowden, David - AMS; Coale, Dana - AMS; Flores, Elizabeth R - AMS; Gebault King, ReneeA - AMS; John, David - AMS; Jones, Samuel - AMS; Keeler, Douglas - AMS; Ladd, Jessica - AMS; Morris, Craig - AMS; Morris, Erin - AMS; Neal, Arthur - AMS; Parrott, Charles - AMS; Smith, AlexandriaP - AMS; Smith, Catherine - AMS; Spriggs, Kimberly - AMS; Stahl, Dana - AMS; Summers, Bruce - AMS; Trykowski, David - AMS; Tucker, Jennifer - AMS; Tuckwiller, David - AMS; Turpin, Jennifer - AMS; Ulibarri, Ronald - AMS; Unkenholz, Becky - AMS; Woods, Frank - AMS; Stewart, Dana - AMS  
**Cc:** Richmond, William - AMS  
**Subject:** AMS Hot Issues  
**Attachments:** 2017-10-6 AMS Hot Issues Report.docx

Good Morning,

Attached is the AMS Hot Issues report for the week ending 10/6

*Christopher O'Hagan*

Confidential Assistant

Agricultural Marketing Service

Room 3064-A

Cell: (b)(6)

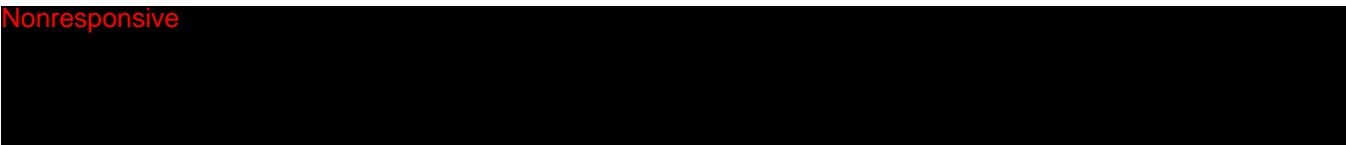
[Christopher.ohagan@ams.usda.gov](mailto:Christopher.ohagan@ams.usda.gov)

**AMS Weekly Hot Issues  
Week Ending October 6, 2017**

Nonresponsive

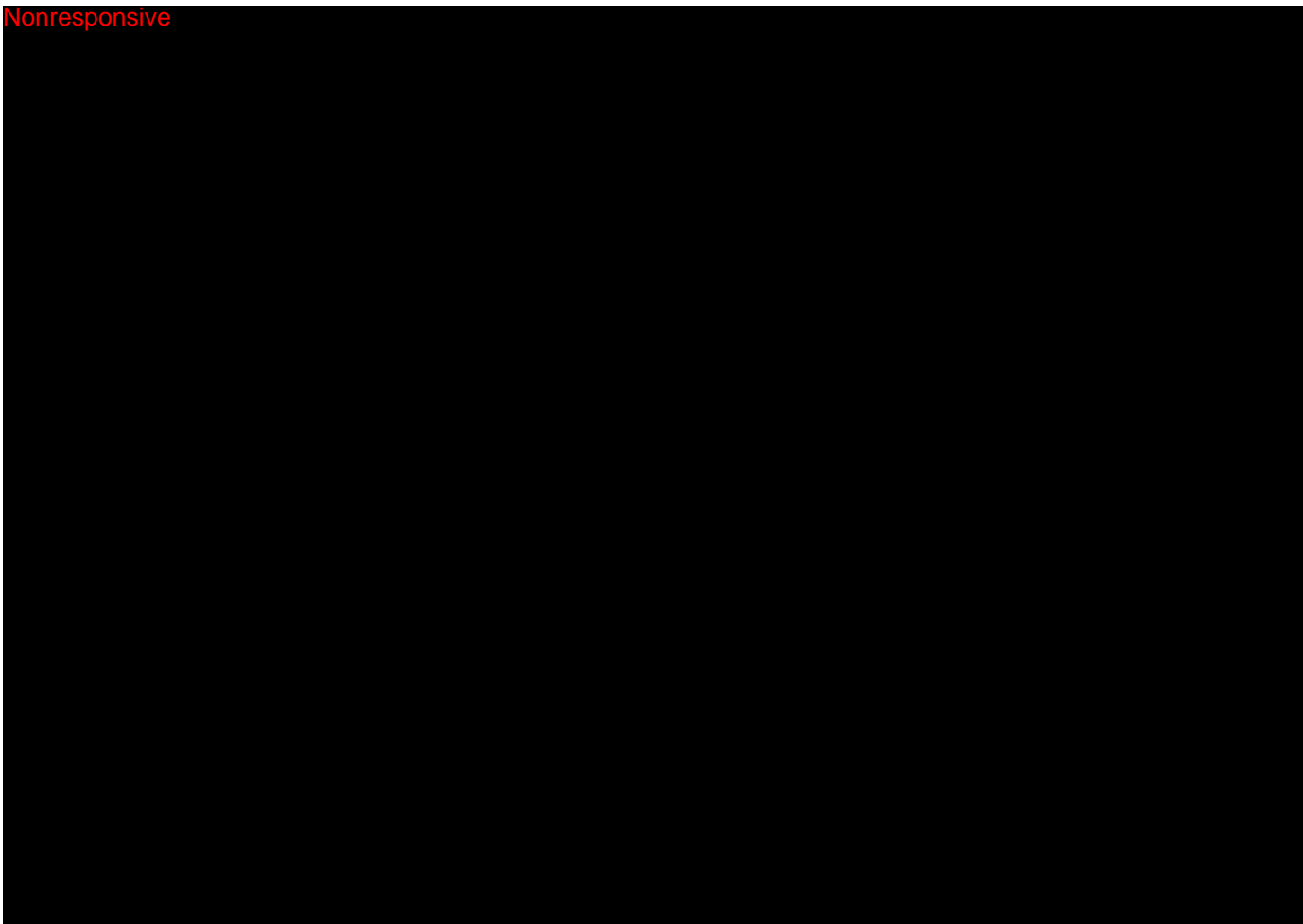


Nonresponsive



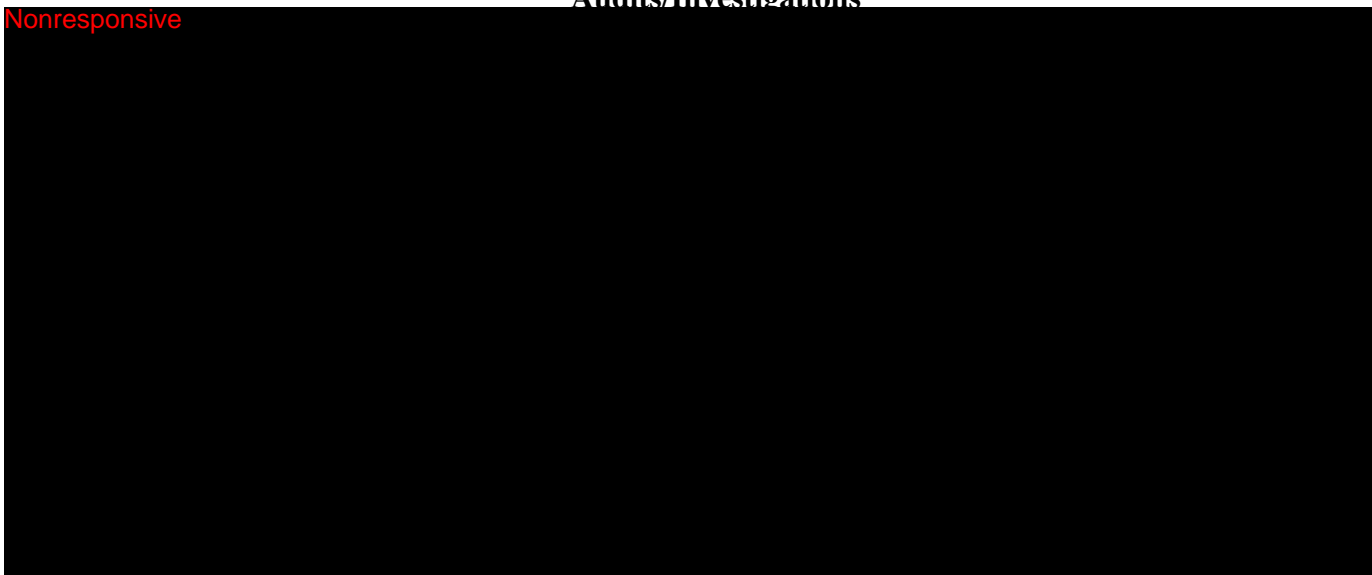
**Programs and Policies**

Nonresponsive



**Audits/Investigations**

Nonresponsive





Nonresponsive

**AMS Closes Complaint Investigation on Aurora Organic Dairy**

**Issue:** On May 2, 2017, AMS received a complaint alleging that Aurora Organic Dairy was violating the grazing requirements of the USDA organic regulations.

**AMS Action:** AMS opened an investigation and in June, conducted onsite audits of the Colorado Department of Agriculture and Aurora Organic Dairy. AMS auditors performed a comprehensive review of Aurora Organic Dairy's records, including a review of their grazing system and grazing records. Based on the investigation, AMS concluded that Aurora Organic Dairy was in full compliance with the USDA organic regulations and subsequently closed the complaint on September 27.

## Schurkamp, Lynnea - AMS

---

**From:** Ohagan, Christopher - AMS </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=557E704E00014EFA8142536345C2093A-OHAGAN, CHRIS2CB42B6>  
**Sent:** Thursday, October 19, 2017 9:35 AM  
**To:** Stewart, Dana - AMS; Allen, William - AMS; AMS - Washington DC OA Pub Aff; Betts, Marlene - AMS; Bowden, David - AMS; Coale, Dana - AMS; Flores, Elizabeth R - AMS; Gebault King, ReneeA - AMS; John, David - AMS; Jones, Samuel - AMS; Keeler, Douglas - AMS; Ladd, Jessica - AMS; Morris, Craig - AMS; Morris, Erin - AMS; Neal, Arthur - AMS; Parrott, Charles - AMS; Smith, AlexandriaP - AMS; Smith, Catherine - AMS; Spriggs, Kimberly - AMS; Stahl, Dana - AMS; Summers, Bruce - AMS; Trykowski, David - AMS; Tucker, Jennifer - AMS; Tuckwiller, David - AMS; Turpin, Jennifer - AMS; Ulibarri, Ronald - AMS; Unkenholz, Becky - AMS; Woods, Frank - AMS; Stewart, Dana - AMS  
**Cc:** Richmond, William - AMS  
**Subject:** AMS Hot Issues  
**Attachments:** 2017-10-13 AMS Hot Issues Report.docx

Good morning,

It has come to my attention that because of the Agency wide issues with Email many if not all of you did not receive my email about last week's Hot Issues report.

I apologize for the inconvenience. Attached is last week's report

***Christopher O'Hagan***

Confidential Assistant

Agricultural Marketing Service

Room 3064-A

Cell: (b)(6)

[Christopher.ohagan@ams.usda.gov](mailto:Christopher.ohagan@ams.usda.gov)

**AMS Weekly Hot Issues  
Week Ending October 13, 2017**

**Legal Actions**

Nonresponsive

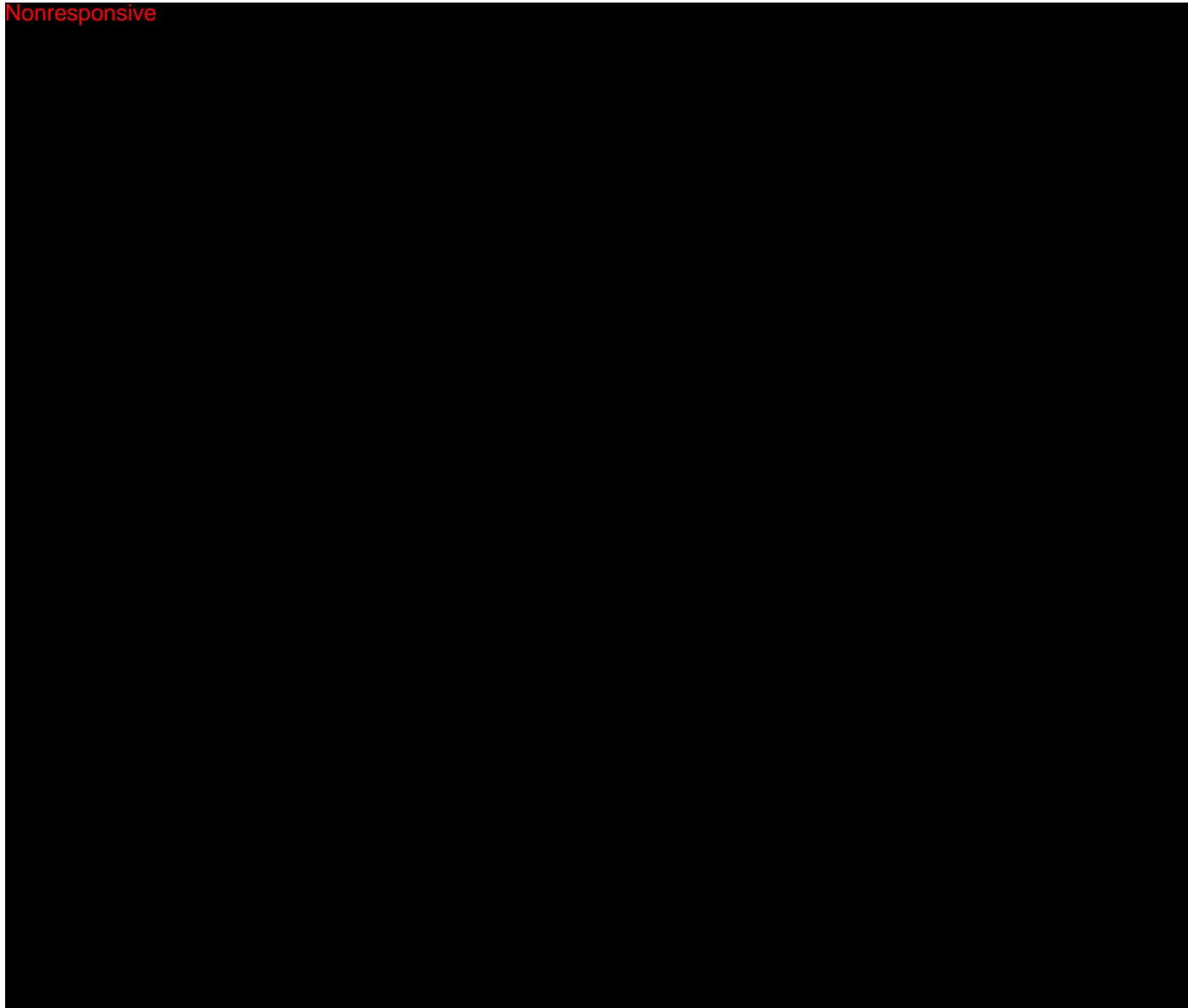


**Programs and Policies**

Nonresponsive

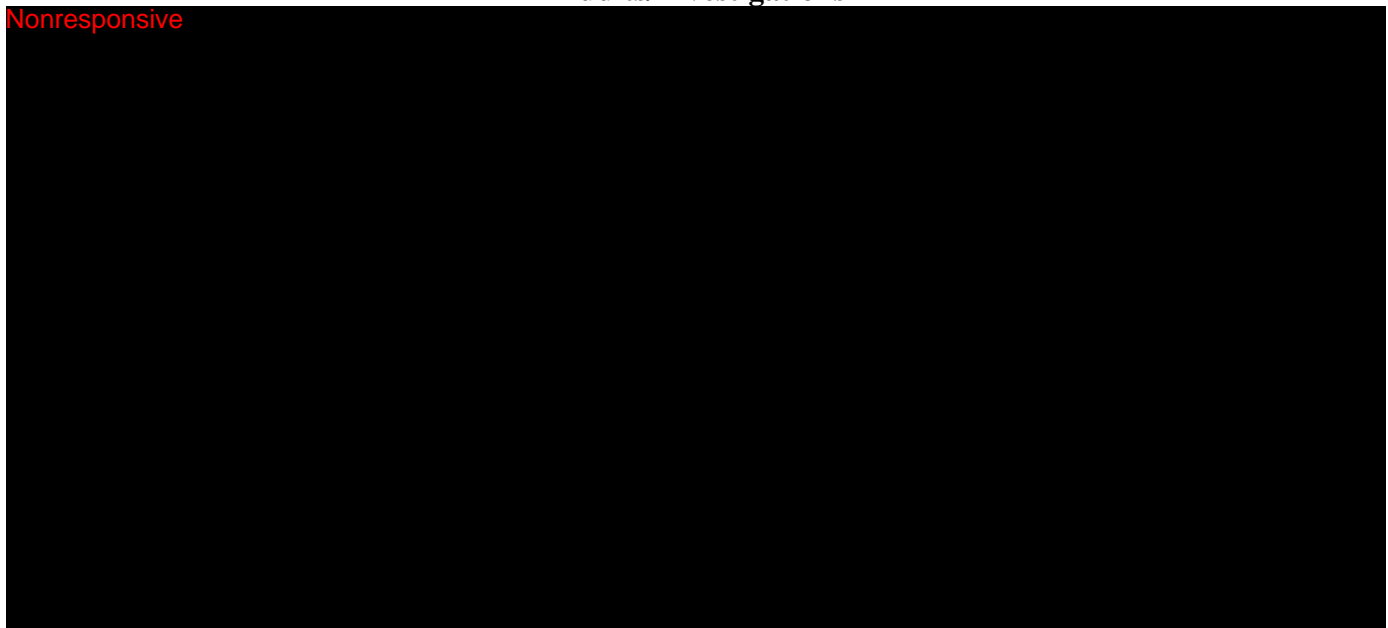


Nonresponsive



**Audits/Investigations**

Nonresponsive



Nonresponsive



**AMS Closes Complaint Investigation on Aurora Organic Dairy**

**Issue:** On May 2, 2017, AMS received a complaint alleging that Aurora Organic Dairy was violating the grazing requirements of the USDA organic regulations.

**AMS Action:** AMS opened an investigation and in June, conducted onsite audits of the Colorado Department of Agriculture and Aurora Organic Dairy. AMS auditors performed a comprehensive review of Aurora Organic Dairy's records, including a review of their grazing system and grazing records. Based on the investigation, AMS concluded that Aurora Organic Dairy was in full compliance with the USDA organic regulations and subsequently closed the complaint on September 27.

## Schurkamp, Lynnea - AMS

---

**From:** Davis, Graham - AMS </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DAVIS GRAHAM 137167F1-F671-40F5-BD87-52157B5C7566E24>  
**Sent:** Friday, October 27, 2017 8:40 AM  
**To:** Rakola, Betsy - AMS  
**Subject:** Automatic reply: Notice of Noncompliance - CDA

Hello,

Thank you for your e-mail. I am out of the office from October 23rd through October 27th and have limited access to e-mail/phone messages. I will respond to your message when I return on Monday October 30th.

Graham

Graham Davis  
Accreditation Manager  
USDA | NATIONAL ORGANIC PROGRAM  
1400 Independence Ave SW | 2649-S | Washington DC 20250  
Desk: 202-692-0047 | Cell: (b)(6)  
[Join the NOP mailing list](#)



COLORADO DEPARTMENT OF AGRICULTURE

September 1, 2017

Ms. Cheri Courtney  
Accreditation and International Activities  
National Organic Program

RE: AIA17228GD.NC1  
Registered Email to: AIAInbox@ams.usda.gov

Dear Ms. Courtney:

On August 23, 2017 the Colorado Dept. of Agriculture withdrew the Combined Notice of Noncompliance and Notice of Proposed Suspension of Berry Patch Farms, LLC dated January 27, 2017 and sent Mr. Ferrell a letter stating such. Mr. Ferrell has also submitted information to resolve the noncompliance and Berry Patch Farms was issued a current organic certificate and is in good standing.

To prevent a reoccurrence of the noncompliance we have modified our management system in the following ways:

1. All CDA Organic Program staff involved in issuing Notices of Noncompliance and Notices of Suspension have been made aware that the Colorado Dept. of Agriculture Organic Program will no longer issue a Combined Notice of Noncompliance and Notice of Suspension as allowed by §205.662 (c) unless an egregious, willful act has been committed and CDA has supporting documentation. The case information will be reviewed in a meeting of CDA Organic Program staff to ensure it warrants this action before issuing the combined notice.
2. Our Organic Policy and Procedure Manual was updated to include this in a new section titled Combined Notice of Noncompliance and Notice of Suspension (page 18):



CDA will issue a Combined Notice of Noncompliance and Notice of Proposed Suspension only in the case of an egregious, willful act has been committed and documented. The case information and all documentation will be reviewed by the Organic Program Manager in consultation with Colorado Dept. of Agriculture Organic Program staff prior to issuing the combined notice. The Notice of Proposed Suspension may apply to the entire operation or a portion of the operation as applicable to the noncompliance.

When a Combined Notice has been sent, CDA will allow the operator 30 days to respond to or rebut the noncompliance issue. If the operator responds but CDA feels the information does not resolve the noncompliance, they will be notified of their right to request mediation and the appeals process outlined in §205.663 and §205.681. CDA will attempt to reach a settlement agreement through the mediation process. If there is no response by the 30 day deadline, a Notice of Suspension will be issued.

3. The Noncompliance and Adverse Actions Flow Chart was downloaded and added to the Organic Policy and Procedures file.

Sincerely,



Janis M. Kieft  
Organic Program Manager

CC: Graham Davis

Attachments: Berry Patch Letter of Withdrawal  
CDA Organic Program Manual






## Schurkamp, Lynnea - AMS







---

**From:** The Cornucopia Institute <cultivate@cornucopia.org>  
**Sent:** Saturday, October 28, 2017 9:00 AM  
**To:** Rakola, Betsy - AMS  
**Subject:** [CAUTION: Suspicious Link]CAUTION: Corporate (Organic) Propaganda Ahead!

**PROCEED WITH CAUTION:** This message triggered warnings of **potentially** malicious web content. Evaluate this email by considering whether you are expecting the message, along with inspection for suspicious links.

Questions: Spam.Abuse@wdc.usda.gov



OCTOBER 28, 2017      

### Public Letter to NOC Leadership

Dear National Organic Coalition Friends,

This is not the first time I will convey these words of caution. There are now, very sadly, **“two organic labels.”** There are interests in this industry that are diametrically opposed to the values shared by organic farmers and consumers. There are billions of dollars in profit being made with short-term profits taking precedence over ethics and regulatory oversight.

NOC and some others in the organic community, for too long, have had a cozy relationship with the industry lobby group, the Organic Trade Association (OTA). Despite the way they present themselves, OTA is not a nonprofit public interest group. They are chartered as a trade association and represent the interests of corporations of all scales (including some of the largest conventional agribusinesses in the U.S.). The businesses they represent buy commodities from farmers, and they sell products to consumers. Sometimes our interests are in concert, and sometimes they are not.

When we launched The Cornucopia Institute, 14 years ago (just as Dean Foods/Horizon and Aurora were changing the landscape of organic dairy by switching to confinement/CAFO production), one of our first formal policy advisors, Roger Blobaum, told us that it might be more important to attend the pre-NOSB meetings, rather than the NOSB meeting itself, because of what we could learn and the relationships we would make.

Back then the pre-NOSB meeting was sponsored by the National Campaign for Sustainable Agriculture. In its original incarnation, it was a meeting for nonprofit activists

and a few cooperative leaders to jam together on the challenges facing organics as it morphed from a “community” into an “industry.”

Since the National Organic Coalition took over running the pre-NOSB meeting, there have been occasions where 50% of the attendees are what we used to call “suits” (i.e. lobbyists, consultants, and corporate executives). They are now too smart to wear a coat and tie, which they used to do at the early NOSB meetings. Now they “dress down” in jeans and a Patagonia vest. But they attend the NOSB meetings while, at the same time, often fighting the nonprofit community on vital interests of organic integrity.

This is not the first time I am writing to NOC leaders about this issue. Let me mention what happened a few years ago, after Martek Biosciences, Parke-Davis, Abbott Laboratories, and Dean/Horizon started illegally adding a genetically modified algal oil (hexane-extracted in the case of infant formula), with the blessing of their certifier, Quality Assurance International.

At one of the pre-NOSB meetings, where the Martek algal oil issue was going to become one of the larger controversies in front of the board, our lead food scientist at the time ended up with one of the consultants for Martek leaning over her shoulder and looking at what was on her laptop at the NOC-sponsored pre-meeting. Outrageous.

At a subsequent NOC pre-meeting, they allowed the chief executive of OTA to make an hour-long presentation on their checkoff scheme. We were a captive audience. The majority of all organizations representing organic farmers have sharply rejected the proposal. But OTA lobbyists, after the pre-meeting, went to Congress and told congressional staffers that “everyone in the organic industry supported the checkoff.” We’re getting more and more used to overt lies in politics.

Note: Subsequent to this meeting, the executive director of one of the NOC members (a trade association) toured the country on behalf of the OTA, “selling” their checkoff at numerous organic industry conferences.

I’m writing now because there’s a panel scheduled to discuss imports at the upcoming pre-meeting in Jacksonville. Two of the three speakers have blood on their hands. The OTA and the Accredited Certifiers Association (ACA) both have been basically silent over the last decade as more and more evidence was brought forward challenging the propriety of imported commodities that were crushing the market for family-scale farmers here in the U.S.

Many OTA members were happy to buy cheap “organic” grain and other ingredients, without question, and the ACA members were happy to receive their check and make sure that the paperwork appeared in order. The only problem? Billions of dollars of commerce were not organic.

I ask farmers the rhetorical question: Are your eggs or milk organic if what you’re feeding your livestock is not?

Farmers and consumers have been defrauded. These prominent organizations virtually never spoke up. However, they did defend the NOP, time and time again, whenever it was challenged.

And now the Office of Inspector General has sharply criticized the NOP, once again, for not carrying out the congressional mandate to protect organic stakeholders.

**"The acquiescence to evil is the worst form of evil." – Elie Wiesel**

Besides cheerleading, the OTA didn't have anything substantive to say until after the organic manure hit the fan with a series of devastatingly damaging articles in *The Washington Post* earlier this year. The stories outlined gross fraud on giant organic egg and dairy CAFOs and in the wholesale quantities of fraudulent imports from the Ukraine, Turkey, Romania, China, and probably Russia.

Now the OTA is in a damage control mode, and they will once again have a captive audience at the pre-meeting in Jacksonville. Luckily, one of the few preeminent experts on fraud in organic imports, John Bobbe of OFARM, will also be on the panel (although he will be outnumbered).

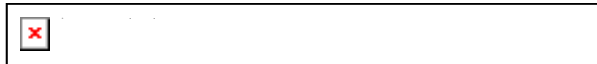
Note: A leader of another NOC member organization (a for-profit business enterprise) currently sits on the OTA Board of Directors.

And you might think that any inaccurate, self-serving corporate propaganda might be called out by learned participants in the pre-meeting. But there is a long, long list of published rules and prohibitions in terms of challenging anyone at the meeting (probably generated as a result of yours truly, when I have challenged the propriety of statements by the OTA and other corporate lobbyists in the past).

So the OTA will be front and center at this meeting, again, just like when they decided to enter into an adversarial relationship with the organic farming community on the checkoff. This occurs at a time when their lobbyists and members will be at the NOSB meeting trying to legalize hydroponic container growing (banned in the European Union and the rest of the world, but favored by industrial growing interests here in the U.S.).



*Wholesum Harvest: 280-acre hydroponic facility and growing*

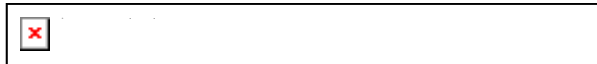


*"Organic" container production at Wholesum Harvest*

So again, I would respectfully suggest that NOC meetings be reconfigured, going forward, exclusively populated by members of civil society groups representing farmers and consumers, the true owners of the organic label.

Profit is not a dirty word. We need successful commercial partners in processing and marketing to drive growth and create market demand for organic food. But if we acquiesce to interests that are working hard to change the working definitions of organics, what have we won?

Right now, the tidal wave of "organic" milk from factory farms has caused most milk handlers to cut the pay price to family farmers by 20 or 30% (and some incomes are further cut by production quotas). I had a conversation with one Organic Valley member in Vermont yesterday. He told me that there are many farmers who can't hang on very long, based on the current pricing structure.



*Aurora Dairy "organic" facility in Texas*



*Herbruck's "organic" egg operation in Michigan*

There is virtually no new family-scale organic egg production because of the cheaper production costs gained by mammoth factory farms confining as many as 200,000 birds in a single building.

And I don't have to tell most of you that, some years, U.S. organic farmers can't sell their grain, at any price, and it ends up on the conventional market – fallout from cheap imports.

We at Cornucopia aren't willing to be silent when there is evil to be exposed.

I will look forward to seeing many of you at the pre-meeting and the NOSB meeting itself.

Sincerely yours,



Mark A. Kastel  
Codirector and Senior Farm Policy Analyst  
The Cornucopia Institute

### **"THOSE WHO ARE WORKING AGAINST US ARE NO GOOD FOR US"**

One of the most noteworthy principles that emerged out of the 19th century "agrarian revolt" which has particular relevance to our times was spoken by William Lamb, the leader of the Alliance radicals and perhaps populism's most articulate theoretician, in a historic 1886 open letter to the *Rural Citizen*.

As business became more economically concentrated, Lamb contended, farmers who continued to strive for friendship and parity with the commercial world were simply failing to comprehend "what is going on against us." Members of the Alliance, he wrote, had to put aside such naiveté. – *Al Krebs*

**"We think all members should show the world which side they are on and we are looking forward for men that will advocate our interests, those who are working against us are no good for us . . . Then for it to be said that we are unwise to let them alone, we can't hold our pens still until we have exposed the matter and let it be known what it is we are working for." – William Lamb**

**Mark A. Kastel**  
**The Cornucopia Institute**  
**[kastel@cornucopia.org](mailto:kastel@cornucopia.org)**  
**608-625-2042 Voice**  
**866-861-2214 Fax**



**P.O. Box 126**  
**Cornucopia, Wisconsin 54827**  
**[www.cornucopia.org](http://www.cornucopia.org)**

HAVING TROUBLE VIEWING THIS? [CLICK HERE FOR A WEB VERSION.](#)

[CLICK HERE TO UNSUBSCRIBE.](#)

# The Cornucopia Institute

is a nonprofit organization engaged in research and educational activities supporting the ecological principles and economic wisdom underlying sustainable and organic agriculture. Through research and investigations on agricultural and food issues, The Cornucopia Institute provides needed information to family farmers, consumers, stakeholders involved in the good food movement, and the media.

P.O. Box 126 Cornucopia, Wisconsin 54827

TEL: [608-625-2000](tel:608-625-2000) | FAX: [866-861-2214](tel:866-861-2214) | [www.cornucopia.org](http://www.cornucopia.org)



## Schurkamp, Lynnea - AMS

---

**From:** AMS - NOPAppeals </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=NOPAPPEALS (AMS)B60C0013-DCA9-43FD-BFBD-6690F02B3E8528B>  
**Sent:** Friday, October 13, 2017 5:07 PM  
**To:** Tucker, Jennifer - AMS  
**Subject:** FW: Simply Dara, Inc.

---

**From:** Kieft - CDA, Janis  
**Sent:** Friday, October 13, 2017 9:05:56 PM (UTC+00:00) Monrovia, Reykjavik  
**To:** AMS - NOPAppeals  
**Subject:** Simply Dara, Inc.

Good morning,

I am planning to send a Notice of Suspension to Simply Dara, Inc. (#6350000465) on Oct. 16, 2017 and just want to verify that this operation has not filed an appeal of the Notice of Proposed Suspension with the USDA.

Thank you.

Janis Kieft  
Organic Program Manager  
Division of Plant Industry



P 303.869.9074 | F 303.466.2860

305 Interlocken Parkway, Broomfield, CO 80021  
[janis.kieft@state.co.us](mailto:janis.kieft@state.co.us) | [www.colorado.gov/aq/dpi](http://www.colorado.gov/aq/dpi)

## Schurkamp, Lynnea - AMS

---

**From:** Pavone, Matthew - AMS </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MATTHEW S. PAVONE519BF316-D385-49AA-98DC-537DC2422F59>  
**Sent:** Friday, October 13, 2017 2:00 PM  
**To:** Davis, Graham - AMS  
**Subject:** RE: FYI - Hearing Request for APL 019-17  
**Attachments:** image001.jpg

Thanks a metric ton.

Matthew Pavone  
Policy Analyst

Office: 202.260.9293  
[Matthew.Pavone@ams.usda.gov](mailto:Matthew.Pavone@ams.usda.gov)

USDA National Organic Program | 1400 Independence Ave SW | Room 1090-South, Stop 0268  
Washington, D.C. 20250-0268 | Tel: 202.720.3252 | Fax: 202.205.7808 | [www.ams.usda.gov/nop](http://www.ams.usda.gov/nop)  
**Want to receive email updates?** [Subscribe to the organic insider.](#)

---

**From:** Davis, Graham - AMS  
**Sent:** Friday, October 13, 2017 1:37 PM  
**To:** Pavone, Matthew - AMS <Matthew.Pavone@ams.usda.gov>  
**Subject:** RE: FYI - Hearing Request for APL 019-17

Good afternoon Matt,

Please see attached. Let me know if you have any questions. This afternoon I will be working on their corrective actions for the NoNC we sent CDA.

*Graham*

**Graham Davis**  
**Accreditation Manager**  
**USDA | NATIONAL ORGANIC PROGRAM**  
**1400 Independence Ave SW | 2649-S | Washington DC 20250**  
**Desk: 202-692-0047 | Cell: (b)(6)**



**Want to receive email updates?** [Subscribe to the Organic Insider](#)

---

**From:** Pavone, Matthew - AMS  
**Sent:** Thursday, September 28, 2017 1:29 PM

**To:** Davis, Graham - AMS <[Graham.Davis@ams.usda.gov](mailto:Graham.Davis@ams.usda.gov)>

**Subject:** RE: FYI - Hearing Request for APL 019-17

Another question, related to Berry Patch (Dept. of Ag Colorado) APL 022-17. Have we heard back from Colorado? If/when, please drop me a line so I can close this out in our appeal track. Thanks!!!!

Matthew Pavone  
Policy Analyst

Office: 202.260.9293

[Matthew.Pavone@ams.usda.gov](mailto:Matthew.Pavone@ams.usda.gov)

USDA National Organic Program | 1400 Independence Ave SW | Room 1090-South, Stop 0268  
Washington, D.C. 20250-0268 | Tel: 202.720.3252 | Fax: 202.205.7808 | [www.ams.usda.gov/nop](http://www.ams.usda.gov/nop)

**Want to receive email updates?** [Subscribe to the organic insider.](#)

---

**From:** Davis, Graham - AMS

**Sent:** Thursday, September 28, 2017 11:17 AM

**To:** Pavone, Matthew - AMS <[Matthew.Pavone@ams.usda.gov](mailto:Matthew.Pavone@ams.usda.gov)>

**Subject:** RE: FYI - Hearing Request for APL 019-17

Good morning Matt,

Thanks for letting me know.

*Graham*

**Graham Davis**

**Accreditation Manager**

**USDA | NATIONAL ORGANIC PROGRAM**

**1400 Independence Ave SW | 2649-S | Washington DC 20250**

**Desk: 202-692-0047 | Cell: (b)(6)**



**Want to receive email updates?** [Subscribe to the Organic Insider](#)

---

**From:** Pavone, Matthew - AMS

**Sent:** Thursday, September 28, 2017 10:51 AM

**To:** Davis, Graham - AMS <[Graham.Davis@ams.usda.gov](mailto:Graham.Davis@ams.usda.gov)>

**Subject:** FYI - Hearing Request for APL 019-17

Hey Graham, For your records. Tad Ellinghuysen, certified through MOSA, has requested a hearing following the Administrator's denial of his appeal of a proposed suspension.

Matthew Pavone  
Policy Analyst



Office: 202.260.9293

[Matthew.Pavone@ams.usda.gov](mailto:Matthew.Pavone@ams.usda.gov)

USDA National Organic Program | 1400 Independence Ave SW | Room 1090-South, Stop 0268  
Washington, D.C. 20250-0268 | Tel: 202.720.3252 | Fax: 202.205.7808 | [www.ams.usda.gov/nop](http://www.ams.usda.gov/nop)  
**Want to receive email updates?** [Subscribe to the organic insider.](#)

## Schurkamp, Lynnea - AMS

---

**From:** Tucker, Jennifer - AMS </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=TUCKER, JENNIFER (A38A469DF-36FB-4EE4-81AE-ECBF74D91823)>  
**Sent:** Wednesday, October 11, 2017 10:55 AM  
**To:** Person, MichelleM (OCIO) - AMS; Glasgow, David - AMS  
**Cc:** Gebault King, ReneeA - AMS; Rakola, Betsy - AMS  
**Subject:** RE: Media - WashPo, Whoriskey: Aurora investigation

900 operations have been suspended or revoked during the past 5 years by certifiers and the NOP.

---

**From:** Person, MichelleM (OCIO) - AMS  
**Sent:** Wednesday, October 11, 2017 10:30 AM  
**To:** Glasgow, David - AMS <David.Glasgow@ams.usda.gov>; Tucker, Jennifer - AMS <Jennifer.Tucker@ams.usda.gov>  
**Cc:** Gebault King, ReneeA - AMS <ReneeA.GebaultKing@ams.usda.gov>; Rakola, Betsy - AMS <Betsy.Rakola@ams.usda.gov>  
**Subject:** RE: Media - WashPo, Whoriskey: Aurora investigation

Hi! I think this looks good and just have one question.

Is this accurate: Over the last five years investigators have suspended or revoked more than 900 certifications where violations were found.

I thought we had investigated 900 complaints not suspended or revoked 900 certifications.

Thanks!  
Michelle

Michelle Muth Person  
U.S. Department of Agriculture  
Agricultural Marketing Service  
Public Affairs Office  
Telephone: 202-260-8210  
Join us on Twitter [@USDA\\_AMS](#)  
Follow us on Instagram: [https://www.instagram.com/usda\\_ams](https://www.instagram.com/usda_ams)

---

**From:** Glasgow, David - AMS  
**Sent:** Wednesday, October 11, 2017 9:31 AM  
**To:** Tucker, Jennifer - AMS <[Jennifer.Tucker@ams.usda.gov](mailto:Jennifer.Tucker@ams.usda.gov)>  
**Cc:** Gebault King, ReneeA - AMS <[ReneeA.GebaultKing@ams.usda.gov](mailto:ReneeA.GebaultKing@ams.usda.gov)>; Rakola, Betsy - AMS <[Betsy.Rakola@ams.usda.gov](mailto:Betsy.Rakola@ams.usda.gov)>; Person, MichelleM (OCIO) - AMS <[MichelleM.Person@ams.usda.gov](mailto:MichelleM.Person@ams.usda.gov)>  
**Subject:** RE: Media - WashPo, Whoriskey: Aurora investigation

I'll work on it. I wanted to make sure it made sense to you and the assertions are true before going to Bruce and OC.

Thanks for the quick review. Hopefully we'll have feedback before we meet this afternoon.

---

**From:** Tucker, Jennifer - AMS  
**Sent:** Wednesday, October 11, 2017 9:08 AM  
**To:** Glasgow, David - AMS <[David.Glasgow@ams.usda.gov](mailto:David.Glasgow@ams.usda.gov)>  
**Cc:** Gebault King, ReneeA - AMS <[ReneeA.GebaultKing@ams.usda.gov](mailto:ReneeA.GebaultKing@ams.usda.gov)>; Rakola, Betsy - AMS <[Betsy.Rakola@ams.usda.gov](mailto:Betsy.Rakola@ams.usda.gov)>; Person, MichelleM (OCIO) - AMS <[MichelleM.Person@ams.usda.gov](mailto:MichelleM.Person@ams.usda.gov)>  
**Subject:** Re: Media - WashPo, Whoriskey: Aurora investigation

Wow – this is great if we're allowed to say it.

On Oct 11, 2017, at 8:51 AM, Glasgow, David - AMS <[David.Glasgow@ams.usda.gov](mailto:David.Glasgow@ams.usda.gov)> wrote:

On the questions about the Aurora investigation and staff credentials – here's a first draft proposed response for discussion:

#### Investigators

(b)(5)



Information on all USDA certified farms and businesses as well as on all USDA accredited certifiers is available online in the searchable [USDA Organic Integrity Database](#). Over the last five years investigators have suspended or revoked more than 900 certifications where violations were found.

---

**From:** Glasgow, David - AMS  
**Sent:** Tuesday, October 10, 2017 4:04 PM  
**To:** Gebault King, ReneeA - AMS <[ReneeA.GebaultKing@ams.usda.gov](mailto:ReneeA.GebaultKing@ams.usda.gov)>; Tucker, Jennifer - AMS <[Jennifer.Tucker@ams.usda.gov](mailto:Jennifer.Tucker@ams.usda.gov)>; Betsy - AMS Rakola (OCIO) ([Betsy.Rakola@ams.usda.gov](mailto:Betsy.Rakola@ams.usda.gov)) <[Betsy.Rakola@ams.usda.gov](mailto:Betsy.Rakola@ams.usda.gov)>  
**Cc:** MichelleM (OCIO) - AMS Person ([MichelleM.Person@ams.usda.gov](mailto:MichelleM.Person@ams.usda.gov)) <[MichelleM.Person@ams.usda.gov](mailto:MichelleM.Person@ams.usda.gov)>  
**Subject:** Media - WashPo, Whoriskey: Aurora investigation  
**Importance:** High

Before you spend too much time pulling answers together, let's discuss. I'm pretty flexible tomorrow (Weds).

Peter Whoriskey, WashPo, asks:

Regarding the Aurora investigation, I'm going to be submitting a FOIA requesting any documents related to the investigation. I expect, given the usual turnaround time for those requests, that this will take months to process.

So in the meantime, I plan on writing a story on what the USDA has NOT revealed about the investigation.

Before I do so, I wanted to give the USDA a chance to answer some basic questions about it.

- 1) How many members of USDA staff were involved in the investigation?
  - What investigative experience did they have?
  - How much experience do the investigators, who were onsite at Aurora, have dealing with large dairies?
  - How much time did each of those staff members put into the investigation?
- 2) What evidence did Aurora present to show that they had allowed their cows to graze throughout the grazing season?
  - What paperwork or other records kept by an organic dairy in the normal course of business would have proved that they allowed the cows out on the days the Post visited?
- 3) What evidence contradicted the evidence presented in the Post story reflecting empty pastures in July, August, September and October?
- 4) Why wasn't their certifier sanctioned for not conducting the annual Aurora inspection during grazing season?

Deadline: Friday afternoon 10/13.

## Schurkamp, Lynnea - AMS

---

**From:** Gebault King, ReneeA - AMS </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=GEBault KING,C174C1DB-D10C-43BF-9FD3-72D4A854A0DD24E>  
**Sent:** Thursday, October 19, 2017 9:59 AM  
**To:** Ohagan, Christopher - AMS  
**Cc:** Richmond, William - AMS  
**Subject:** RE: AMS Hot Issues

Hi Chris,

Thanks for your work on the AMS Hot Issues Report. I just wanted to share some feedback with you. In the two recent October Hot Issues Reports, I noticed that they still contained the Aurora Dairy item. However, in the two October NOP updates I submitted to you, I had deleted the Aurora item and inserted an item about a fraudulent organic corn shipment. On behalf of NOP, I'd sure appreciate it if you could insert the fraudulent shipment info below (and delete the Aurora item) for the upcoming AMS Hot Issues Report. If it is too late into October to include this information, I understand.

Please let me know if I need to make adjustments to my submission process, or if you have an questions. Thanks very much! Renée

Nonresponsive



Kind regards,

*Renée*

Renée Gebault King, Ph.D.  
Chief of Staff

Office: 202.690.1312 | Mobile: (b)(6)  
[ReneeA.GebaultKing@ams.usda.gov](mailto:ReneeA.GebaultKing@ams.usda.gov)

USDA National Organic Program | 1400 Independence Ave SW | Room 2649-South, Stop 0268

Want to receive email updates? [Subscribe to the organic insider.](#)

---

**From:** Ohagan, Christopher - AMS

**Sent:** Thursday, October 19, 2017 9:35 AM

**To:** Stewart, Dana - AMS <Dana.Stewart@ams.usda.gov>; Allen, William - AMS <William.Allen@ams.usda.gov>; AMS - Washington DC OA Pub Aff <WashingtonDCOAPub.Aff@ams.usda.gov>; Betts, Marlene - AMS <Marlene.Betts@ams.usda.gov>; Bowden, David - AMS <David.Bowden@ams.usda.gov>; Coale, Dana - AMS <Dana.Coale@ams.usda.gov>; Flores, Elizabeth R - AMS <ElizabethR.Flores@ams.usda.gov>; Gebault King, ReneeA - AMS <ReneeA.GebaultKing@ams.usda.gov>; John, David - AMS <David.John@ams.usda.gov>; Jones, Samuel - AMS <Samuel.Jones@ams.usda.gov>; Keeler, Douglas - AMS <Douglas.Keeler@ams.usda.gov>; Ladd, Jessica - AMS <Jessica.Ladd@ams.usda.gov>; Morris, Craig - AMS <Craig.Morris@ams.usda.gov>; Morris, Erin - AMS <erin.morris@ams.usda.gov>; Neal, Arthur - AMS <Arthur.Neal@ams.usda.gov>; Parrott, Charles - AMS <Charles.Parrott@ams.usda.gov>; Smith, AlexandriaP - AMS <AlexandriaP.Smith@ams.usda.gov>; Smith, Catherine - AMS <Catherine.Smith@ams.usda.gov>; Spriggs, Kimberly - AMS <Kimberly.Spriggs@ams.usda.gov>; Stahl, Dana - AMS <Dana.Stahl@ams.usda.gov>; Summers, Bruce - AMS <Bruce.Summers@ams.usda.gov>; Trykowski, David - AMS <David.Trykowski@ams.usda.gov>; Tucker, Jennifer - AMS <Jennifer.Tucker@ams.usda.gov>; Tuckwiller, David - AMS <David.Tuckwiller@ams.usda.gov>; Turpin, Jennifer - AMS <Jennifer.Turpin@ams.usda.gov>; Ulibarri, Ronald - AMS <Ronald.Ulibarri2@ams.usda.gov>; Unkenholz, Becky - AMS <Becky.Unkenholz@ams.usda.gov>; Woods, Frank - AMS <Frank.Woods@ams.usda.gov>; Stewart, Dana - AMS <Dana.Stewart@ams.usda.gov>

**Cc:** Richmond, William - AMS <William.Richmond@ams.usda.gov>

**Subject:** AMS Hot Issues

Good morning,

It has come to my attention that because of the Agency wide issues with Email many if not all of you did not receive my email about last week's Hot Issues report.

I apologize for the inconvenience. Attached is last week's report

***Christopher O'Hagan***

Confidential Assistant

Agricultural Marketing Service

Room 3064-A

Cell: (b)(6)

[Christopher.ohagan@ams.usda.gov](mailto:Christopher.ohagan@ams.usda.gov)

## Schurkamp, Lynnea - AMS

---

**From:** Tucker, Jennifer - AMS </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=TUCKER, JENNIFER (A38A469DF-36FB-4EE4-81AE-ECBF74D91823)>  
**Sent:** Friday, October 6, 2017 3:02 PM  
**To:** Glasgow, David - AMS; Person, MichelleM (OCIO) - AMS  
**Cc:** Avila, Joan - AMS; Bradley, Mark - AMS  
**Subject:** RE: Aurora Dairy complaint - Columbia

I agree. Thanks.

---

**From:** Glasgow, David - AMS  
**Sent:** Friday, October 6, 2017 3:01 PM  
**To:** Tucker, Jennifer - AMS <Jennifer.Tucker@ams.usda.gov>; Person, MichelleM (OCIO) - AMS <MichelleM.Person@ams.usda.gov>  
**Cc:** Avila, Joan - AMS <Joan.Avila@ams.usda.gov>; Bradley, Mark - AMS <Mark.Bradley@ams.usda.gov>  
**Subject:** RE: Aurora Dairy complaint - Columbia

Yes – thanks – I’ve already responded to her. Her story is already written. I pointed her to the text of the letter that says we did a full on-site audit and no violations were found. I used the letter language. I think that’s all we have for her.

---

**From:** Tucker, Jennifer - AMS  
**Sent:** Friday, October 6, 2017 2:58 PM  
**To:** Glasgow, David - AMS <[David.Glasgow@ams.usda.gov](mailto:David.Glasgow@ams.usda.gov)>; Person, MichelleM (OCIO) - AMS <[MichelleM.Person@ams.usda.gov](mailto:MichelleM.Person@ams.usda.gov)>  
**Cc:** Avila, Joan - AMS <[Joan.Avila@ams.usda.gov](mailto:Joan.Avila@ams.usda.gov)>; Bradley, Mark - AMS <[Mark.Bradley@ams.usda.gov](mailto:Mark.Bradley@ams.usda.gov)>  
**Subject:** RE: Aurora Dairy complaint - Columbia

See below – I think this is the one Michelle A forwarded to you as well.  
Jenny

---

**From:** Sanderson, Emily T. (MU-Student) [<mailto:etst3b@mail.missouri.edu>]  
**Sent:** Friday, October 6, 2017 1:23 PM  
**To:** Avila, Joan - AMS <[Joan.Avila@ams.usda.gov](mailto:Joan.Avila@ams.usda.gov)>; Tucker, Jennifer - AMS <[Jennifer.Tucker@ams.usda.gov](mailto:Jennifer.Tucker@ams.usda.gov)>; Bradley, Mark - AMS <[Mark.Bradley@ams.usda.gov](mailto:Mark.Bradley@ams.usda.gov)>  
**Subject:** Aurora Dairy complaint - Columbia

Good Afternoon All,

My name is Emily Sanderson, I'm a reporter with KOMU 8 News in Columbia, Missouri. I just left you a voicemail hoping to speak with you about the recent complaint filed and dismissed on Aurora Dairy by the Cornucopia Institute and the investigation you conducted. If you have some time to talk I would really appreciate your time and information. Feel free to give me a call at your convenience, my number is (b)(6) [REDACTED]. Look forward to speaking with you.

Respectfully,

Emily Sanderson

University of Missouri | Broadcast Journalism '18

KOMU 8 News | Reporter

(c) (b) (6)



## Schurkamp, Lynnea - AMS

---

**From:** Kieft - CDA, Janis <janis.kieft@state.co.us>  
**Sent:** Monday, October 16, 2017 11:20 AM  
**To:** Davis, Graham - AMS  
**Subject:** Re: Corrective actions  
**Attachments:** image001.jpg

Good morning Graham,

Thank you, I think we talked about this because I was confused after our discussions during the audit. Basically I am understanding that in the Berry Patch case, a combined notice should not have been sent and the only rebuttal opportunity is when it is a straight notice of noncompliance.

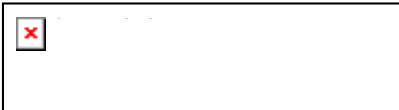
I will fix and send you the updated information.

By the way, I sent an email last Thursday about an application that we want to deny without a notice of noncompliance as allowed in 205.405(g) but want to make sure that we have examined the situation carefully before we send the Denial notice. Would you look at that email sent on Oct. 12. We would really appreciate it.

Thanks again.

Janis Kieft  
303-869-9074

Janis Kieft  
Organic Program Manager  
Division of Plant Industry



P 303.869.9074 | F 303.466.2860

305 Interlocken Parkway, Broomfield, CO 80021  
[janis.kieft@state.co.us](mailto:janis.kieft@state.co.us) | [www.colorado.gov/aq/dpi](http://www.colorado.gov/aq/dpi)

On Mon, Oct 16, 2017 at 8:11 AM, Davis, Graham - AMS <[Graham.Davis@ams.usda.gov](mailto:Graham.Davis@ams.usda.gov)> wrote:

Good morning Janis,

I am working on CDA's corrective action for the noncompliance associated with Berry Patch Farm's appeal. I reviewed the update policy in CDA's Organic Program Policy and Procedures Manual. On page 18 it states,

“When a Combined Notice has been sent, CDA will allow the operator 30 days to respond to or rebut the noncompliance issue. If the operator responds but CDA feels the information does not resolve the noncompliance, they will be notified of their right to request mediation and the appeals process outlined in §205.663 and §205.681. CDA will attempt to reach a settlement agreement through the mediation process. If there is no response by the 30 day deadline, a Notice of Suspension will be issued.”

However, §CFR 205.662(c)(1-4) states, “When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or revocation of certification may be combined in one notification. The notification of proposed suspension or revocation of certification shall state:

- (1) The reasons for the proposed suspension or revocation;
- (2) The proposed effective date of such suspension or revocation;
- (3) The impact of a suspension or revocation on future eligibility for certification; and
- (4) The right to request mediation pursuant to §205.663 or to file an appeal pursuant to §205.681.”

Operations don’t get the opportunity to rebut or submit corrective actions. Please make the necessary corrections to CDA’s policy manual and re-submit it to me.

Thank you.

*Graham*

**Graham Davis**

**Accreditation Manager**

**USDA | NATIONAL ORGANIC PROGRAM**

**1400 Independence Ave SW | 2649-S | Washington DC 20250**

**Desk: 202-692-0047 | Cell: (b)(6)**



Want to receive email updates? [Subscribe to the Organic Insider](#)

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

## Schurkamp, Lynnea - AMS

---

**From:** Trykowski, David - AMS </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=TRYKOWSKI, DAVIDD0753C6C-952C-461C-9F1D-74A899A333A2>  
**Sent:** Friday, October 20, 2017 6:28 AM  
**To:** Tucker, Jennifer - AMS  
**Cc:** Rakola, Betsy - AMS; Colson, Thomas - AMS  
**Subject:** RE: New OIG Hotline

Jenny:

We (Compliance) are going to take care of the response back to OIG on this Hotline Complaint. We will be asking NOP for some information in order to compose the response. The purpose of the email was to make you aware of the hotline and the fact that we would be seeking your assistance to gather that information.

Dave

---

**From:** Tucker, Jennifer - AMS  
**Sent:** Thursday, October 19, 2017 4:41 PM  
**To:** Rakola, Betsy - AMS <Betsy.Rakola@ams.usda.gov>; Colson, Thomas - AMS <Thomas.Colson@ams.usda.gov>  
**Cc:** Trykowski, David - AMS <David.Trykowski@ams.usda.gov>  
**Subject:** RE: New OIG Hotline

(b)(5)

Can we use that approach with this?

If so, we can do that, (b)(5)

Jenny

---

**From:** Rakola, Betsy - AMS  
**Sent:** Thursday, October 19, 2017 4:26 PM  
**To:** Colson, Thomas - AMS <[Thomas.Colson@ams.usda.gov](mailto:Thomas.Colson@ams.usda.gov)>  
**Cc:** Trykowski, David - AMS <[David.Trykowski@ams.usda.gov](mailto:David.Trykowski@ams.usda.gov)>; Tucker, Jennifer - AMS <[Jennifer.Tucker@ams.usda.gov](mailto:Jennifer.Tucker@ams.usda.gov)>  
**Subject:** RE: New OIG Hotline

Hi Tom,

That is a lengthy list. Please let us know how and when to follow up with you to provide the necessary information for resolution.

Best,

Betsy Rakola

Director, Compliance and Enforcement, USDA-AMS-NOP  
202-720-3252

---

**From:** Colson, Thomas - AMS  
**Sent:** Thursday, October 19, 2017 2:51 PM  
**To:** Rakola, Betsy - AMS <[Betsy.Rakola@ams.usda.gov](mailto:Betsy.Rakola@ams.usda.gov)>

Cc: Trykowski, David - AMS <[David.Trykowski@ams.usda.gov](mailto:David.Trykowski@ams.usda.gov)>

Subject: New OIG Hotline

Good afternoon Betsy,

We received an OIG Hotline Complaint in which the Cornucopia Institute alleged in a complaint dated December 9, 2016, that the National Organic Program had mismanaged and failed to provide adequate oversight in 11 specific areas: 1) Failed to require organic poultry producers provide outdoor access for its birds; 2) Condoned organic certification of hydroponic operations; 3) Failed to issue guidance on the use of DHA in organics; 4) Relied upon its certifying agents to address alleged violations; 5) Failed to investigate Cornucopia's complaint against the certifying agents for 14 organic entities that did not have their livestock/birds on pasture; 6) Allowed organic entities (Shamrock Dairy) to continue engaging in organic sales after being found in willful compliance; 7) Failed to provide information (Shamrock Dairy) requested in a FOIA (ongoing litigation in federal court); 8) Mismanaged its programs which resulted in several federal lawsuits; 9) Squandered hundreds of thousands of dollars in FOIA lawsuits by withholding documents from the public; 10) Allowed conflicts of interest in decision making by the NSOB; 11) McEvoy acted unethically and made false statements when he publicly stated he was not under investigation.

Cornucopia Institute further alleged in a complaint dated May 13, 2017, that the National Organic Program had failed to adequately investigate the Aurora Dairy complaint and it had failed to address the "wholesale fraud in the importation of organic commodities (grains) for years."

(b)(5) [Redacted]

Thanks - Tom

Tom Colson, Chief, AMS Compliance Branch  
Ofc: (202) 690-4867, Fax: (202) 205-6469, [Thomas.Colson@ams.usda.gov](mailto:Thomas.Colson@ams.usda.gov)  
1400 Independence Avenue SW, Room 2707-S, Washington, DC 20250-0203

*Maintaining the integrity of AMS' relationships with its employees, customers and stakeholders.*

USDA is an equal opportunity provider, employer, and lender.

## Schurkamp, Lynnea - AMS

---

**From:** Davis, Graham - AMS </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DAVIS GRAHAM 137167F1-F671-40F5-BD87-52157B5C7566E24>  
**Sent:** Monday, October 16, 2017 10:17 AM  
**To:** Kieft - CDA, Janis  
**Subject:** RE: Possible Denial of Certification  
**Attachments:** image001.jpg

Good morning Janis,

I can call you today to discuss this situation.

*Graham*

**Graham Davis**  
**Accreditation Manager**  
**USDA | NATIONAL ORGANIC PROGRAM**  
**1400 Independence Ave SW | 2649-S | Washington DC 20250**  
**Desk: 202-692-0047 | Cell: (b)(6)**



Want to receive email updates? [Subscribe to the Organic Insider](#)

**From:** Kieft - CDA, Janis [mailto:janis.kieft@state.co.us]  
**Sent:** Thursday, October 12, 2017 7:20 PM  
**To:** Davis, Graham - AMS <Graham.Davis@ams.usda.gov>  
**Subject:** Possible Denial of Certification

Good morning Graham,

We have an operation that has applied to CDA for organic certification but after working with the owner for several months, we feel the operation should be denied certification. The main reason for our denial is that the operation has sold some crop as organic before their application has been completed. They also sold the produce to a certified organic company that as far as we know is under the impression that the produce is certified organic and they plan on reselling it. I don't know if it has been sold by the certified organic company because the company has requested the new operation's organic certificate which cannot be provided. We have explained the certification process to the applicant.

There have been many other issues with the application including:

The OSP does not provide the correct business name or person to receive summons and legal notices. (It lists a previous owner/operator).

Requests have been made of the applicant for additional information to complete the initial review of the OSP but the operation has not been thorough in their responses and has not gotten back to us in a timely manner.

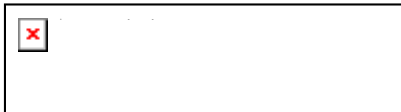
They have not paid the correct fees.

They thought the operation could work under the organic certificate from the previous business owner. They were notified in writing that organic certificates were not transferable. The application comes from a new owner and a new business name that has been incorporated in the state of Colorado, but they are growing crops on property that was previous certified through CDA. The previous owner surrendered their organic certificate earlier this year.

Our question is, can this be a straight denial or do we have to issue a noncompliance first? We have looked at and re-read 205.405(g) but don't know if they willfully or purposefully misrepresented, or the person is just not understanding the process that they must go through to be certified in spite of the information we are providing. We are concerned that if there are more delays, we will run out of time to do an on-site inspection for the crop portion of the OSP. I looked at the Process/Handler OSP to see if we could work on that but some of the products they want to certify are from the crop portion of their operation.

Any guidance is appreciated. I am in the office today if you want to discuss or need any other information but am in meetings until about 12:30 pm eastern time. Thank you.

Janis Kieft  
Organic Program Manager  
Division of Plant Industry



P 303.869.9074 | F 303.466.2860

305 Interlocken Parkway, Broomfield, CO 80021  
[janis.kieft@state.co.us](mailto:janis.kieft@state.co.us) | [www.colorado.gov/ag/dpi](http://www.colorado.gov/ag/dpi)

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

## Schurkamp, Lynnea - AMS

---

**From:** Davis, Graham - AMS </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DAVIS GRAHAM 137167F1-F671-40F5-BD87-52157B5C7566E24>  
**Sent:** Friday, November 3, 2017 3:55 PM  
**To:** Nally Yanessa, Shannon - AMS  
**Subject:** RE: Settlement Agreement Sunny Valley Farms Inc.  
**Attachments:** image001.jpg

Thanks for letting me know.

*Graham*

**Graham Davis**  
**Accreditation Manager**  
**USDA | NATIONAL ORGANIC PROGRAM**  
**1400 Independence Ave SW | 2649-S | Washington DC 20250**  
**Desk: 202-692-0047 | Cell: (b)(6)**



Want to receive email updates? [Subscribe to the Organic Insider](#)

---

**From:** Nally Yanessa, Shannon - AMS  
**Sent:** Friday, November 3, 2017 3:34 PM  
**To:** Davis, Graham - AMS <Graham.Davis@ams.usda.gov>  
**Subject:** RE: Settlement Agreement Sunny Valley Farms Inc.

Hi Graham,

This is probably a C&E settlement. We don't have an appeal from Sunny Valley Farms.

Thanks,  
Shannon

---

**From:** Davis, Graham - AMS  
**Sent:** Friday, November 3, 2017 3:18 PM  
**To:** Nally Yanessa, Shannon - AMS <[Shannon.NallyYanessa@ams.usda.gov](mailto:Shannon.NallyYanessa@ams.usda.gov)>  
**Subject:** RE: Settlement Agreement Sunny Valley Farms Inc.

Good afternoon Shannon,

Can you let me know who was working on the settlement agreement for Sunny Valley Farms? I have some questions for them.

Thanks.

*Graham*



**Graham Davis**  
**Accreditation Manager**  
**USDA | NATIONAL ORGANIC PROGRAM**  
**1400 Independence Ave SW | 2649-S | Washington DC 20250**  
**Desk: 202-692-0047 | Cell: (b)(6)**



Want to receive email updates? [Subscribe to the Organic Insider](#)

---

**From:** Nally Yanessa, Shannon - AMS **On Behalf Of** AMS - NOPAppeals  
**Sent:** Monday, October 30, 2017 3:30 PM  
**To:** Davis, Graham - AMS <[Graham.Davis@ams.usda.gov](mailto:Graham.Davis@ams.usda.gov)>  
**Subject:** FW: Settlement Agreement Sunny Valley Farms Inc.

Hi Graham,

This message was sent to the NOP Appeals inbox.

Thanks,  
Shannon

**From:** Kieft - CDA, Janis [<mailto:janis.kieft@state.co.us>]  
**Sent:** Monday, October 30, 2017 11:58 AM  
**To:** AMS - NOPAppeals <[NOPAppeals@ams.usda.gov](mailto:NOPAppeals@ams.usda.gov)>  
**Subject:** Settlement Agreement Sunny Valley Farms Inc.

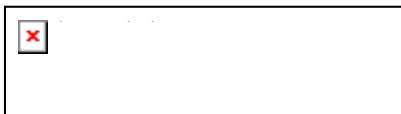
Good morning Graham,

A settlement agreement for Ernest Ford/Sunny Valley Farms Inc. was recently received at the business address for Sunny Valley Inc. for his signature. However, Sunny Valley Farms Inc is no longer in existence. What should be done with the settlement agreement?

Thank you.

Janis  
303-869-9074

Janis Kieft  
Organic Program Manager  
Division of Plant Industry



P 303.869.9074 | F 303.466.2860

305 Interlocken Parkway, Broomfield, CO 80021  
[janis.kieft@state.co.us](mailto:janis.kieft@state.co.us) | [www.colorado.gov/aq/dpi](http://www.colorado.gov/aq/dpi)

## Schurkamp, Lynnea - AMS

---

**From:** Mike Jawer <mike@anh-usa.org>  
**Sent:** Wednesday, October 18, 2017 5:56 PM  
**To:** Tucker, Jennifer - AMS  
**Subject:** Re: Thank You for Meeting: 3 Followup Questions

Hi Jenny,

I appreciate your getting back with me on those questions. Let me quickly ask:

- Is the problem with import certificates, simply put, that NOP doesn't have the authority to require them? And would their chief value be in tracking, documenting that a shipment is "organic," that the right people have been handling them, or something else?

- Re: excluded operations, when you talk about "handlers" are you referring to shippers, people who work at ports, others? I'm trying to get a handle on who these middlemen or brokers are.

- Last but not least, we didn't talk about the Aurora Dairies decision but was that made by another agency within USDA or by the NOP itself? I've been asked by staff colleagues and members.

Thanks so much again.

Mike

On Wed, Oct 18, 2017 at 12:12 PM, Tucker, Jennifer - AMS <[Jennifer.Tucker@ams.usda.gov](mailto:Jennifer.Tucker@ams.usda.gov)> wrote:

Hi Mike – It was nice to meet you. Responses inline below.

1) You mentioned the value of requiring transaction certificates - especially import certificates - as providing leverage with agencies such as DHS. You contrasted with operation certificates that are in place currently. I'm actually not familiar with either concept. What are transaction certificates as distinct from operation and how would they benefit the cause? (I jotted down "Automatic Commercial Environment," which may or may not be relevant.)

When certified, an organic operation is given a "certificate" by its certifier – as per the regulations, that certificate is valid until and unless the operation surrenders, or is suspended or revoked. The practice is that each year, certifiers generally issue a new certificate once the organic system plan (OSP) update and inspection are complete and the file reviewed. Certificates are for the operation, and do not expire. More on these:

<https://www.ams.usda.gov/sites/default/files/media/2603.pdf>

An import certificate (sometimes called a transaction certificate) is a more specific certificate, and is associated with a particular shipment that is being imported into a country. These are required under our equivalency agreements, but are NOT required for shipments coming from other countries. The import certificate certifies that a specific shipment is compliant, so it is transaction level, rather than operation level.

**2) I brought up IOAS in our conversation, which is an independent nonprofit accrediting agency. Would there be any value to 'farming out' (you'll pardon the expression) some of the responsibilities that NOP now holds to authorize and assess certifiers to private sector entities like IOAS? Would that lighten the load - if so, is it doable under current law?**

This is a good question – we have considered “outsourcing” or contracting out some of audits, and this is an option we could legally pursue. For a number of reasons, we have chosen not to take that path – it is, however, an option that we periodically revisit, and may look at again in the future. For now, we believe there is substantive benefit in having dedicated full-time Federal employees doing these ground-level audits.

**3) You highlighted the need to "clamp down on uncertified brokers in the supply chain." To whom are you referring? What are these other entities, and what sort of certification would provide greater assurance?**

There is a provision in the regulations (7 CFR 205.101 (b)) that allows for “excluded operations.” This exclusion allows handlers to be uncertified if the package they are handling is packaged or otherwise enclosed in a container prior to being received or acquired, and if the product remains in same package or container, and is not processed further. Instead of clamp down, I would say “eliminate the exclusion to support full supply chain traceability.”

As a final comment, one additional step that would really support organic integrity would be to provide AMS with refused entry authority and stop sale authority when products are identified that don't comply with the USDA organic regulations – as it is right now, we can notify people in the supply chain who are impacted when there fraudulent activities, but we do not have “stop entry/stop sale” authority – that would be a big help in ensuring integrity when issues are detected.

Again, I enjoyed meeting you, and look forward to staying connected.

Jenny

-----  
Jennifer Tucker, Ph.D.  
Associate Deputy Administrator  
USDA Agricultural Marketing Service

National Organic Program  
Phone: [\(202\) 720-3252](tel:(202)720-3252)  
[Jennifer.Tucker@ams.usda.gov](mailto:Jennifer.Tucker@ams.usda.gov)

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

--



## Schurkamp, Lynnea - AMS

---

**From:** Mike Jawer <mike@anh-usa.org>  
**Sent:** Thursday, October 19, 2017 12:49 PM  
**To:** Tucker, Jennifer - AMS  
**Subject:** Re: Thank You for Meeting: 3 Followup Questions

Jenny, this further insight is appreciated and I'll convey to fellow staff and ANH leaders. It's very useful for us to be able to size up what's happening and what's needed to bolster the integrity of the USDA Organic label.

Regards,  
Mike

On Wed, Oct 18, 2017 at 6:04 PM, Tucker, Jennifer - AMS <[Jennifer.Tucker@ams.usda.gov](mailto:Jennifer.Tucker@ams.usda.gov)> wrote:

Hi Mike – See below:

- Is the problem with import certificates, simply put, that NOP doesn't have the authority to require them? And would their chief value be in tracking, documenting that a shipment is "organic," that the right people have been handling them, or something else?

Correct – NOP does not have the authority to require them outside the equivalency agreements – they are written into those agreements, but are not part of the regulations themselves. Yes, the chief value is traceability – tracing specific organic product (like a grain shipment) from farm to table and back is supported by being able to trace volumes and how they pass from one set of hands to another along complex supply chains.

- Re: excluded operations, when you talk about "handlers" are you referring to shippers, people who work at ports, others? I'm trying to get a handle on who these middlemen or brokers are.

Brokers are the best example – basically, anyone who takes possession as the responsible party of a product as it moves through the supply chain.

- Last but not least, we didn't talk about the Aurora Dairies decision but was that made by another agency within USDA or by the NOP itself? I've been asked by staff colleagues and members.

The Aurora investigation was conducted by the NOP and involved both our accreditation auditors, who did an audit of both CDA and an associated inspection of Aurora, and the compliance and enforcement team, who were the leads for the complaint. We also consulted with our Standards team when evaluating compliance against the written regulations.

Thanks so much again.

Mike

On Wed, Oct 18, 2017 at 12:12 PM, Tucker, Jennifer - AMS <[Jennifer.Tucker@ams.usda.gov](mailto:Jennifer.Tucker@ams.usda.gov)> wrote:

Hi Mike – It was nice to meet you. Responses inline below.

**1) You mentioned the value of requiring transaction certificates - especially import certificates - as providing leverage with agencies such as DHS. You contrasted with operation certificates that are in place currently. I'm actually not familiar with either concept. What are transaction certificates as distinct from operation and how would they benefit the cause? (I jotted down "Automatic Commercial Environment," which may or may not be relevant.)**

When certified, an organic operation is given a “certificate” by its certifier – as per the regulations, that certificate is valid until and unless the operation surrenders, or is suspended or revoked. The practice is that each year, certifiers generally issue a new certificate once the organic system plan (OSP) update and inspection are complete and the file reviewed. Certificates are for the operation, and do not expire. More on these: <https://www.ams.usda.gov/sites/default/files/media/2603.pdf>

An import certificate (sometimes called a transaction certificate) is a more specific certificate, and is associated with a particular shipment that is being imported into a country. These are required under our equivalency agreements, but are NOT required for shipments coming from other countries. The import certificate certifies that a specific shipment is compliant, so it is transaction level, rather than operation level.

**2) I brought up IOAS in our conversation, which is an independent nonprofit accrediting agency. Would there be any value to 'farming out' (you'll pardon the expression) some of the responsibilities that NOP now holds to authorize and assess certifiers to private sector entities like IOAS? Would that lighten the load - if so, is it doable under current law?**

This is a good question – we have considered “outsourcing” or contracting out some of audits, and this is an option we could legally pursue. For a number of reasons, we have chosen not to take that path – it is, however, an option that

we periodically revisit, and may look at again in the future. For now, we believe there is substantive benefit in having dedicated full-time Federal employees doing these ground-level audits.

**3) You highlighted the need to "clamp down on uncertified brokers in the supply chain." To whom are you referring? What are these other entities, and what sort of certification would provide greater assurance?**

There is a provision in the regulations (7 CFR 205.101 (b)) that allows for "excluded operations." This exclusion allows handlers to be uncertified if the package they are handling is packaged or otherwise enclosed in a container prior to being received or acquired, and if the product remains in same package or container, and is not processed further. Instead of clamp down, I would say "eliminate the exclusion to support full supply chain traceability."

As a final comment, one additional step that would really support organic integrity would be to provide AMS with refused entry authority and stop sale authority when products are identified that don't comply with the USDA organic regulations – as it is right now, we can notify people in the supply chain who are impacted when there fraudulent activities, but we do not have "stop entry/stop sale" authority – that would be a big help in ensuring integrity when issues are detected.

Again, I enjoyed meeting you, and look forward to staying connected.

Jenny

-----  
Jennifer Tucker, Ph.D.  
Associate Deputy Administrator  
USDA Agricultural Marketing Service

National Organic Program  
Phone: [\(202\) 720-3252](tel:2027203252)  
[Jennifer.Tucker@ams.usda.gov](mailto:Jennifer.Tucker@ams.usda.gov)

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

--



--





## Schurkamp, Lynnea - AMS

---

**From:** Davis, Graham - AMS  
</OU=VIRTUAL/CN=SMTP/CN=GRAHAM.DAVIS@AMS.USDA.GOV>  
**Sent:** Wednesday, November 8, 2017 3:38 PM  
**To:** Kieft - CDA, Janis  
**Subject:** RE: Updated Letter and CDA Policy Manual  
**Attachments:** image001.jpg

Good afternoon Janis,

Thank you for providing these revisions. I have processed your corrective actions and submitted them for administrative review.

*Graham*

**Graham Davis**  
**Accreditation Manager**  
**USDA | NATIONAL ORGANIC PROGRAM**  
**1400 Independence Ave SW | 2649-S | Washington DC 20250**  
**Desk: 202-692-0047 | Cell: (b)(6)**



Want to receive email updates? [Subscribe to the Organic Insider](#)

**From:** Kieft - CDA, Janis [mailto:janis.kieft@state.co.us]  
**Sent:** Friday, November 3, 2017 6:21 PM  
**To:** Davis, Graham - AMS <Graham.Davis@ams.usda.gov>  
**Subject:** Updated Letter and CDA Policy Manual

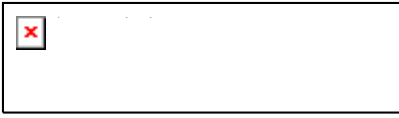
Hi Graham,

Attached is the updated letter of Sept. 1 referring to AIA17228GD.NC1 and the updated Policy Manual to include the language about when correction of a noncompliance is not possible and removing the option to rebut when issuing a combined NONC + NOPS (pages 17-18).

Please let me know if you have any questions.

Janis  
303-869-9074

Janis Kieft  
Organic Program Manager  
Division of Plant Industry



P 303.869.9074 | F 303.466.2860

305 Interlocken Parkway, Broomfield, CO 80021  
[janis.kieft@state.co.us](mailto:janis.kieft@state.co.us) | [www.colorado.gov/aq/dpi](http://www.colorado.gov/aq/dpi)

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

## Schurkamp, Lynnea - AMS

---

**From:** Davis, Graham - AMS </O=MMS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DAVIS GRAHAM 137167F1-F671-40F5-BD87-52157B5C7566E24>  
**Sent:** Monday, October 16, 2017 9:17 AM  
**To:** janis.kieft@state.co.us  
**Subject:** Read: Registered: CDA Annual Report  
**Attachments:** Read: Registered: CDA Annual Report.msg

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

## Schurkamp, Lynnea - AMS

---

**From:** janis.kieft@state.co.us  
**Sent:** Friday, October 13, 2017 6:29 PM  
**To:** AMS - AIAinbox  
**Cc:** Davis, Graham - AMS  
**Subject:** Registered: CDA Annual Report



This is a Registered Email™ message from [janis.kieft@state.co.us](mailto:janis.kieft@state.co.us).

---

Large file(s) have been sent to you and are ready to be downloaded. Your file(s) will expire in 14 days.

### File Name(s)

CDA 2017 Annual Report.zip	23.66MB
----------------------------	---------

### Download Files

Good morning,

Attached is a file containing the Annual Report Checklist and supporting documents for the Colorado Dept. of Agriculture Organic Program's 2017 Annual Report. Please let me know if you have any questions or need additional information.

Janis Kieft

Organic Program Manager

Colorado Dept. of Agriculture

303-869-9074

If the button above is not active, please click or copy/paste the link below into your browser to pick up the attachments.

<https://largemail.r1.rpost.net/files/dKEgEecAlKUz3FobFnS04lpsu7ihJdudbOpNpo9c/ln/en-us>



## Schurkamp, Lynnea - AMS

---

**From:** janis.kieft@state.co.us  
**Sent:** Friday, October 13, 2017 6:29 PM  
**To:** AMS - AIAinbox  
**Cc:** Davis, Graham - AMS  
**Subject:** Registered: CDA Annual Report



This is a Registered Email™ message from [janis.kieft@state.co.us](mailto:janis.kieft@state.co.us).

---

Large file(s) have been sent to you and are ready to be downloaded. Your file(s) will expire in 14 days.

### File Name(s)

CDA 2017 Annual Report.zip	23.66MB
----------------------------	---------

### Download Files

Good morning,

Attached is a file containing the Annual Report Checklist and supporting documents for the Colorado Dept. of Agriculture Organic Program's 2017 Annual Report. Please let me know if you have any questions or need additional information.

Janis Kieft

Organic Program Manager

Colorado Dept. of Agriculture

303-869-9074

If the button above is not active, please click or copy/paste the link below into your browser to pick up the attachments.

<https://largemail.r1.rpost.net/files/doEI7PvWJTA2Z5CwMOiDOsmew9PRja2idstCmsAd/ln/en-us>



## Schurkamp, Lynnea - AMS

---

**From:** Kieft - CDA, Janis <janis.kieft@state.co.us>  
**Sent:** Wednesday, October 18, 2017 2:06 PM  
**To:** Davis, Graham - AMS  
**Subject:** Updated Colorado Policy & Procedures Manual  
**Attachments:** CDA Organic Policy and Procedures Manual Rev Oct. 17 2017.docx

Good afternoon Graham,

Attached is the updated manual. The section on Combined Notices now begins at the bottom of page 17 and is continued on page 18 (due to some formatting changes). I will continue to work on the manual as I have noticed some other things that need further information and I want to add some information in an appendix.

Looking through the NOP rules, the term Proposed Suspension or Proposed Revocation and Suspension or Revocation is always used together. Is there any guidance on when to suspend a certification versus a revocation? Also 205.662 (f) basically says that a suspended operation can request reinstatement at any time UNLESS otherwise stated in the notification of suspension. I have seen some certifying agents give a time period for suspension. Is identifying a specific suspension period up to the discretion of the certifying agent?

Thank you.

Janis Kieft  
Organic Program Manager  
Division of Plant Industry



P 303.869.9074 | F 303.466.2860

305 Interlocken Parkway, Broomfield, CO 80021  
[janis.kieft@state.co.us](mailto:janis.kieft@state.co.us) | [www.colorado.gov/aq/dpi](http://www.colorado.gov/aq/dpi)



# Organic Program Policy and Procedures Manual

Developed April 2003  
Revised October, 2017

## Table of Contents

Colorado Department of Agriculture Mission Statement .....	3
Administration .....	3
Organic Advisory Committee.....	3
History of Organic Certification in Colorado .....	3
Authority and Scope of the CDA Organic Program .....	3
Policies of the CDA Organic Program.....	4
CDA Organic Program Procedures.....	8
Personnel Used in the Organic Program .....	8
Annual Program Review .....	9
Annual Report to NOP.....	9
Providing Information to Persons Seeking Certification .....	10
Record Keeping and Document Control.....	10
Confidentiality .....	11
Conflict of Interest .....	11
Investigation of Certified Operations.....	12
Inspection and Testing, Reporting, and Exclusion from Sale.....	12
CDA Certification Process.....	13
Public Statements Regarding Certification .....	19
International.....	19
Current Fee Schedule .....	21
Unannounced Inspections.....	22



## **Colorado Department of Agriculture Mission Statement**

The mission of the Colorado Department of Agriculture (CDA) is to strengthen and advance Colorado's agriculture industry; ensure a safe, high quality, and sustainable food supply; and protect consumers, the environment, and natural resources.

### **Administration**

Administration of the Department is under the direction, control, and management of the Commissioner of Agriculture appointed by the Governor. The Department is divided into seven Divisions and the Commissioner's office to provide for the efficient administration of the Department's business.

The organic program is operated as part of the Department's Plant Industry Division. The Division performs a number of regulatory and market access functions including protecting human health, environmental protection, consumer protection and providing certification for market access.

### **Organic Advisory Committee**

As part of the authorizing legislation to seek accreditation, the Colorado General Assembly required that the CDA maintain an Organic Certification Advisory Committee. The General Assembly changed the composition of the committee during the 2010 legislative session to better represent CDA's certified clients. The twelve member committee is made up of 9 organic producers (in proportion to the number of certified entities in each category) and other organic industry representatives; one representative from the CSU extension service; one representative from the CSU research centers; and a member of the general public. This committee assists the CDA in setting certification fees to be charged and advises the CDA in matters relating to organic production, processing and handling as well as marketing opportunities.

These members receive only actual travel costs to and from the meeting as compensation. Records are kept of the advisory committee meetings.

### **History of Organic Certification in Colorado**

The CDA has operated an organic certification program since 1990. From 1990 to October 2002, the CDA certified only crops according to the Colorado Organic Certification Act and associated rules. In October of 2002, CDA received accreditation under the USDA to be an accredited certifier as part of The Organic Food Production Act of 1990 and 7 CFR 205. On June 26, 2009 CDA received reaccreditation from the USDA NOP. CDA continues to operate in this capacity.

### **Authority and Scope of the CDA Organic Program**

Authority was granted to the Colorado Department of Agriculture (CDA) by the 2002 General

Assembly to carry out House Bill 02-1186, Section 3, 35-11.5-103 (9) “State Organic Certification Program” or “State Certification” means the program that implements 7 U.S.C. Sec. 6501 et seq. and 7 CFR Part 205 in Colorado in order that the state certify organic producers pursuant to 7 U.S.C. Sec. 6507.

In House Bill 02-1186, section 35-11.5-116. Accreditation states: The Commissioner shall seek accreditation from the Secretary and shall create and submit a plan for the establishment of a State Organic Certification program to the Secretary for approval pursuant to 7 U.S.C. Sec. 6507. The Commissioner received initial accreditation to operate an organic program from USDA on October 16, 2002. CDA received reaccreditation from the USDA on June 26, 2009.

The Colorado Organic Standards is a state certification program controlled by the state Department of Agriculture. It is the intent of CDA to review and monitor those persons or entities seeking to acquire or maintain organic certification under 7 CFR Part 205 National Organic Program (NOP) regulations, whenever those operations are within CDA’s area of accreditation, geographic area of operations and within resource limits. CDA is accredited in all four areas of operation under the NOP including:

- 1) the certification of crops;
- 2) the certification livestock;
- 3) the certification of wild crop harvesting; and
- 4) the certification of processing/handling.

## **Policies of the CDA Organic Program**

- 1) The Organic Foods Productions Act of 1990 (Act) and 7 CFR 205, the NOP rules, are the basis for all certification decisions and all necessary steps will be made to comply with NOP rules. In additions, CDA will comply with, implement and carry out any other terms and conditions determined by the Agriculture Marketing Service (AMS) Administrator.
- 2) The CDA will demonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart.
- 3) The CDA will carry out the provisions of the Act and the regulations in this part, including the provisions of §205.402 through 205.406 and §205.670.
- 4) The CDA will maintain a staff with sufficient expertise in organic production and handling techniques to fully comply with and implement the terms and conditions of the organic certification program established under the Act and the NOP rule. The staff will consist of adequately trained individuals, including inspectors, certification review officials and administrative personnel. CDA will ensure employees have sufficient expertise in organic production or handling techniques to successfully perform the duties assigned.
- 5) The CDA will conduct an annual performance evaluation of all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate

qualifications for certification, make recommendations concerning certification, or make certification decisions and implement measures to correct any deficiencies in certification services.

- 6) The CDA will have an annual program review of its certification activities conducted by the certifying agent's staff, an outside auditor, or a consultant who has expertise to conduct such reviews and implement measures to correct any noncompliances with the Act and the regulations in this part that are identified in the evaluation.
- 7) The CDA will provide sufficient information to persons seeking certification to enable them to comply with the applicable requirements of the Act and the regulations in this part.
- 8) The CDA will maintain all records pursuant to §205.510(b) and make all such records available for inspection and copying during normal business hours by authorized representatives of the Secretary and the applicable State organic program's governing State official.
- 9) The CDA will maintain strict confidentiality with respect to its clients under the applicable organic certification program and not disclose to third parties (with the exception of the Secretary or the applicable State organic program's governing State official or their authorized representatives) any business-related information concerning any client obtained while implementing the regulations in this part, except as provided for in §205.504(b)(5).
- 10) The CDA will prevent conflicts of interest by:
  - (i) Not certifying a production or handling operation if the certifying agent or a responsibly connected party of such certifying agent has or has held a commercial interest in the production or handling operation, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;
  - (ii) Excluding any person, including contractors, with conflicts of interest from work, discussions, and decisions in all stages of the certification process and the monitoring of certified production or handling operations for all entities in which such person has or has held a commercial interest, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;
  - (iii) Not permitting any employee, inspector, contractor, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected: Except, That, a certifying agent that is a not-for-profit organization with an Internal Revenue Code tax exemption or, in the case of a foreign certifying agent, a comparable recognition of not-for-profit status from its government, may accept voluntary labor from certified operations;
  - (iv) Not giving advice or providing consultancy services, to certification applicants or certified operations, for overcoming identified barriers to certification;
  - (v) Requiring all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and all parties responsibly connected to the certifying agent to complete an annual conflict of interest disclosure report; and
  - (vi) Ensuring that the decision to certify an operation is made by a person different from

those who conducted the review of documents and on-site inspection.

- 11) (i) The CDA will reconsider a certified operation's application for certification and, if necessary, perform a new on-site inspection when it is determined, within 12 months of certifying the operation, that any person participating in the certification process and covered under §205.501(a)(11)(ii) has or had a conflict of interest involving the applicant. All costs associated with a reconsideration of application, including onsite inspection costs, shall be borne by the certifying agent.  
(ii) Refer a certified operation to a different accredited certifying agent for recertification and reimburse the operation for the cost of the recertification when it is determined that any person covered under §205.501(a)(11)(i) at the time of certification of the applicant had a conflict of interest involving the applicant.
- 12) The CDA will accept the certification decisions made by another certifying agent accredited or accepted by USDA pursuant to §205.500.
- 13) The CDA will refrain from making false or misleading claims about its accreditation status, the USDA accreditation program for certifying agents, or the nature or qualities of products labeled as organically produced.
- 14) The CDA will submit to the Administrator a copy of:
  - (i) Any notice of denial of certification issued pursuant to §205.405, notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation sent pursuant to §205.662 simultaneously with its issuance; and
  - (ii) A list, on January 2 of each year, including the name, address, and telephone number of each operation granted certification during the preceding year.
- 15) The CDA will only charge applicants for certification and certified production and handling operations only those fees and charges for certification activities that it has filed with the Administrator.
- 16) The CDA will pay and submit fees to AMS in accordance with §205.640.
- 17) The CDA will provide the inspector, prior to each on-site inspection, with previous on-site inspection reports and notify the inspector of its decision regarding certification of the production or handling operation site inspected by the inspector and of any requirements for the correction of minor noncompliances.
- 18) The CDA will accept all production or handling applications that fall within its area(s) of accreditation and certify all qualified applicants, to the extent of its administrative capacity to do so without regard to size or membership in any association or group.
- 19) The CDA has a seal that may be used by production and handling operations certified by CDA to indicate affiliation with our program. However CDA will not:

- (i) require use of the seal or any other CDA identifying mark on any product sold, labeled, or represented as organically produced as a condition of certification; and
  - (ii) require compliance with any production or handling practices other than those provided for in the Act and the NOP rules as a condition of use of its identifying mark. However, should CDA require more restrictive requirements, approved by the Secretary, CDA shall require compliance with such requirements as a condition of use of their identifying mark by such operations.
  - (iii) Use of the CDA seal on products certified in the “Made with Organic (Ingredients or Ingredient Categories)” is not allowed on the principle display panel of packaged products. Other use of the CDA seal on such products will be considered on a case-by-case basis.
- 20) The CDA will not exclude from participation in or deny the benefits of the National Organic Program to any person due to discrimination because of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status.
- 21) The CDA will submit annually to the administrator on or before the anniversary date of the issuance of the notification of accreditation, the following reports and fees:
- (i) a complete and accurate update of information submitted pursuant to 205.503 and 205.504;
  - (ii) information supporting any changes being requested in the areas of accreditation;
  - (iii) a description of the measures implemented in the previous year and any measures to be implemented in the coming year to satisfy any terms and conditions determined by the administrator to be necessary, as specified in the most recent notification of accreditation or notice of renewal of accreditation;
  - (iv) the results of the most recent performance evaluations and annual program review and a description of adjustments to the certifying agent’s operation and procedures implemented or to be implemented in response to the performance evaluations and program review; and
  - (v) the fees required in 205.640 (a).
- 22) The CDA will maintain records according to the following schedule:
- (i) records obtained from applicants for certification and certified operations will be maintained for not less than 5 years beyond their receipt;
  - (ii) records created by CDA regarding applicants for certification and certified operations will be maintained for not less than 10 years beyond their creation; and
  - (iii) records created or received by CDA pursuant to the accreditation requirements will be maintained for not less than 5 years beyond their creation or receipt.
- 23) The CDA will only charge reasonable fees for certification. Fees will be set through the Colorado Administrative Procedures Act to ensure public notification and opportunity for participation.
- 24) The CDA will only charge certified production and handling operations those fees and charges that it has filed with the Administrator.
- 25) CDA shall provide each applicant with an estimate of the total cost of certification and an

estimate of the annual cost of updating the certification.

- 26) The CDA will provide all persons inquiring about the application process with a copy of our fee schedule.

## **CDA Organic Program Procedures**

### **Personnel Used in the Organic Program**

The Plant Industry Division utilizes employees with expertise in organic production and the NOP rules.

#### Inspection Personnel

Inspectors who perform the organic inspection are required to be knowledgeable in broad agricultural practices. Criteria for employment are a four-year degree in an agricultural or closely related field or equivalent experience. Once hired, the inspector must go through extensive training prior to being able to conduct inspections on his or her own. The training program involves studying the NOP rules, observing journeyman inspectors conducting inspections, and an apprenticeship program of conducting inspections in the presence of a journeyman inspector or the inspector supervisor. The inspector cannot conduct inspections on their own until the inspector supervisor and organic program manager agree the person is adequately prepared. This determination will also involve input from the journeyman inspectors who the employee worked with. The Director of the Division will advance apprentice inspectors to the journeyman classification when they feel training is adequate.

During the 2010 legislative session, CDA was granted authority by the General Assembly to utilize contract inspectors for organic certification work in the case this becomes necessary.

#### Certification Review Personnel

Individuals charged with the initial review of applications or making certification decisions are required to have a four-year degree in an agricultural or closely related field or equivalent experience. These individuals also must have training on the NOP rules prior to performing their functions. The individuals are typically staff members who have several years of experience with the program.

#### Administrative Personnel

These individuals are not required to perform technical functions related to the certification and therefore aren't required to have agricultural expertise. However, they are trained in general NOP requirements so that they can answer routine general certification questions.

#### Ongoing Staff Training

Inspector meetings are generally held semi-annually to discuss pertinent issues of the past 6 months and cover general program items and changes. This training and discussion is internally led.

Staff also attends NOP training as often as possible. The program manager primarily attends these training sessions but other personnel may attend. In addition, inspectors may be sent to outside training such as training offered through the International Organic Inspectors Association.

### Staff Evaluation

All staff must have a performance plan in place at all times. This plan states the expectations of the person for the upcoming year. The person must receive an interim evaluation during the course of the year to determine how they are performing. A final evaluation is conducted at the end of the year. Should the person receive an interim or final evaluation of “needs improvement” a performance improvement plan must be developed.

All field staff (inspectors) shall have, at least annually, a field evaluation conducted. This evaluation will be conducted during the course of an annual inspection of a crop, livestock, or processing operation. Each inspector will be field evaluated by one of the following: the CDA Field Services Supervisor, the CDA Organic Program Manager, a CDA Lead Inspector, or a CDA Multiple Inspector. The field evaluation will use the Organic Field Inspector Evaluation form to conduct the review. Any indication of Needs Improvement will be communicated by the Organic Program Manager to the Field Services Supervisor for development of a training plan for the areas needing improvement.

### **Annual Program Review**

The CDA conducts an annual program review of its certification activities. This review is typically conducted by the department’s staff. CDA ensures that the individual(s) who conducts the review has expertise to conduct such a review. Based on the review, CDA implements the required measures to correct any noncompliances with the Act and the NOP rule. CDA also uses this evaluation as a way to identify process and performance improvement opportunities.

### **Annual Report to NOP**

CDA will submit annually to the administrator on or before the anniversary date of the issuance of the notification of accreditation (October 16), the following reports and fees:

- 1) a complete and accurate update of information submitted pursuant to 205.503 and 205.504;
- 2) information supporting any changes being requested in the areas of accreditation;
- 3) a description of the measures implemented in the previous year and any measures to be implemented in the coming year to satisfy any terms and conditions determined by the administrator to be necessary, as specified in the most recent notification of accreditation or notice of renewal of accreditation;
- 4) the results of the most recent performance evaluations and annual program review and a description of adjustments to the certifying agent’s operation and procedures implemented or to be implemented in response to the performance evaluations and program review; and
- 5) the fees required in 205.640 (a).

This effort is conducted under the direction of the Organic Program Manager.

## **Providing Information to Persons Seeking Certification**

The CDA will provide sufficient information to persons seeking certification to enable them to comply with the applicable requirements of the Act and the NOP rules.

### Certification Packet

Applicants who request information on certification are supplied a packet either via the U.S. Post Office or email. The packet contains a copy of the regulations, a letter of instructions outlining requirements for application, an Organic System Plan comprised of all current modules, an inspection appointment form, and a schedule of the fees. The letter of instruction includes the fee schedule required for application and the mailing address for application submission, estimate of inspection costs, and lists necessary information required for application.

Contact information for organic program personnel are also provided so the applicant can ask further questions. Depending on the request, additional information may also be provided such as where to access other websites with organic information.

## **Record Keeping and Document Control**

The CDA will maintain all records pursuant to §205.510(b) and make all such records available for inspection and copying during normal business hours by authorized representatives of the Secretary.

CDA will maintain records according to the following schedule:

- 1) records obtained from applicants for certification and certified operations will be maintained for not less than 5 years beyond their receipt;
- 2) records created by CDA regarding applicants for certification and certified operations will be maintained for not less than 10 years beyond their creation; and
- 3) records created or received by CDA pursuant to the accreditation requirements will be maintained for not less than 5 years beyond their creation or receipt.

To date CDA has kept all records related to the NOP program since we received accreditation on October 16, 2002. The CDA keeps the most recent 3 years within the building and have an off-site storage location for the other records since accreditation was received.

All forms, policies and procedures will be organized in a Document Control System. Each document shall be assigned a Document Control Number, Revision, date of release, and document name. A master spreadsheet of all documents will be maintained with the Document Control number, date of release, document name, and revision; all staff will be expected to only use the most current revision of all forms. When a form is revised or made obsolete due to changes in regulations or procedures, it will be moved to an electronic archive, and all employees will be notified of the new document update via email.



## **Confidentiality**

The CDA maintains strict confidentiality with respect to its clients under the organic certification program and does not disclose to third parties (with the exception of the Secretary or his authorized representatives) any business-related information concerning any client obtained while implementing the regulations in this part, except as provided for in §205.504(b)(5).

If a request is made for the information allowed for in §205.504(b)(5), the department requires that request to meet the requirements of the Colorado Open Records Act.

Information available to the public through requests under the Open Records Act is:

- 1) certification certificates issued during the current and 3 preceding calendar years;
- 2) list of producers/handlers whose operations CDA has certified, including for each the name and type(s) of operation, products produced, and the effective date of the certification, during the current and 3 preceding calendar years;
- 3) the results of laboratory analyses for residues of pesticides and other prohibited substances conducted during the current and 3 preceding calendar years; and
- 4) other business information as permitted in writing by producer/handler.

### Release of documents for review by other certifiers

When another certifying agency requires records of a certified producer, the department will require a written request by that certifying agency. Such request will include the name of the client requested, current address, and phone number. Also required is a reason for the request, and how that information will be used. A confidentiality statement is required to accompany the request.

## **Conflict of Interest**

Upon hiring, all employees associated with the organic program are instructed on the importance of avoiding conflicts of interest and that disclosure of any conflicts of interest are required. All employees are required to complete and sign a conflict of interest disclosure report annually. This report must identify any food or agriculture-related business interests, including business interests of immediate family members, which cause a conflict of interest.

The CDA will not certify a production or handling operation if the certifying agent or a responsibly connected party of such certifying agent has or has held a commercial interest in the production or handling operation, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;

The CDA will exclude any person, including contractors, with conflicts of interest from work, discussions, and decisions in all stages of the certification process and the monitoring of certified production or handling operations for all entities in which such person has or has held a commercial interest, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification.

When a conflict of interest is discovered, the CDA will perform one of the following actions: 1) the CDA will reconsider a certified operation's application for certification and, if necessary, perform a new on-site inspection. All costs associated with a reconsideration of application, including onsite inspection costs, shall be borne by CDA. 2) refer a certified operation to a different accredited certifying agent for recertification and reimburse the operation for the cost of the recertification.

The CDA will not permit any employee, inspector, contractor, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected.

The CDA will not give advice or providing consultancy services, to certification applicants or certified operations, for overcoming identified barriers to certification. CDA requires all employees to sign a no coaching policy at the beginning of their employment.

The CDA will ensure that the decision to certify an operation is made by a person different from those who conducted the review of documents and on-site inspection. One individual is assigned to conduct the initial review of the application, a separate individual forms the inspection and a third separate individual makes the certification decision.

## **Investigation of Certified Operations**

CDA submits all complaints to National Organic Program via email. If the complaint is referred to the CDA by the NOP Compliance and Enforcement Branch, the CDA will investigate the complaint and report the findings to the CE Division along with documentation. CDA will follow section 8.2.1.4 in the NOP 4001 "Complaint Handling Procedure" as needed.

## **Inspection and Testing, Reporting, and Exclusion from Sale**

### Preharvest and Postharvest Residue Testing

CDA conducts preharvest and or postharvest testing of any agricultural input used or agricultural product to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" when we have reason to believe that the agricultural input or product has come into contact with a prohibited substance, has been produced using excluded methods or conducted randomly comprising no less than 5% of total certified operations. A CDA inspector collects any samples obtained. The inspector follows the CDA Residue Sampling Procedures and Guidelines document. Sample integrity is maintained throughout the entire process with appropriate chain of custody protocol. The residue testing is performed in CDA's Standards Laboratory that is accredited to ISO 17025:2005, *General Requirements for the Competence of Testing and Calibration Laboratories* (Current certificate on file). All chemical analysis is performed in accordance with the methods described in the most current edition of the *Official Methods of Analysis of the AOAC International* or other current applicable validated methodology determining the presence of contaminants in agricultural products. The CDA's Sampling Procedures comply with the NOP Guidance 2610 effective November 8, 2012.

Results of all analyses and tests performed are promptly provided to the Administrator. The results are all made available for public access, unless the testing is part of an ongoing compliance investigation.

If test results indicate a specific agricultural product contains pesticide residues or environmental contaminants that exceed the Food and Drug Administration's or the Environmental Protection Agency's regulatory tolerances, CDA promptly reports such data to the Federal health agency whose regulatory tolerance or action level has been exceeded.

#### Exclusion from organic sale

When residue testing detects prohibited substances at levels that are greater than 5 percent of the Environmental Protection Agency's tolerance for the specific residue detected or unavoidable residual environmental contamination, the agricultural product must not be sold, labeled, or represented as organically produced. The CDA will work with the Administrator, and any other agency officials to ensure these products are not sold, labeled or represented as organic.

#### Positive Tests under 5 percent of the Environmental Protection Agency tolerance

If the EPA has established a tolerance for the detected pesticide in the tested sample, and residue is detected at or below 5 percent of the EPA tolerance, the CDA shall:

1. Notify the certified operation of the test results.
2. Require the operation to provide an assessment of why the residue may be present.
3. If appropriate, consider a notice of noncompliance for the following violations:
  - a. § 205.202(c): inadequate buffer zones to prevent the unintended application of prohibited substances.
  - b. § 205.272: inadequate measures to prevent commingling or contamination of organic products. The notice should require corrective actions to prevent future contamination.
4. If residues are not a result of the application of prohibited pesticides, the product may be sold as organic
5. Retain the test results, which must be made available to the public upon request and will be reviewed as part of the next audit.
6. If assessment and corrective actions are not received within the time frame required per #2 above, Notice of Noncompliance will be issued for failure to comply with NOP 205.201(a)(6).

## **CDA Certification Process**

### Application Review Procedures

CDA will, within a reasonable time, review the application materials to ensure these materials contain all the elements required by NOP and the State Certification Program. The entire review process from the time the application is received until a certification decision is made may take approximately 120 days for initial applicants requesting certification. The length of time may be longer for renewal applicants because deadlines are implemented for organic systems plan renewals that are earlier than needed so that the CDA can process all plans in a timely manner.

### Application for Certification

A person seeking certification of a production or handling operation must submit an application to CDA for certification. The application must include the following:

- 1) An organic production or handling system plan;
- 2) The name of the person completing the application; the applicant's business name, address and telephone number and when the applicant is a corporation, the name, address and telephone

- number of the person authorized to act on the applicant's behalf; and
- 3) The name or names of any organic certifying agents to which application has previously been made; the year of application; the outcome of the application submitted including, when available, a copy of any notification of non-compliance or denial of certification issued to the applicant for certification; and a description of the actions taken by the applicant to correct non-compliance noted in the notification of non-compliance
  - 4) Other information necessary to determine compliance with the Act and regulations

### Review of Application

Upon acceptance of an application for certification, CDA will:

- 1) Review the application to ensure completeness;
- 2) Determine by review of the application materials whether the applicant appears to comply or may be able to comply with the applicable requirements;
- 3) Verify that an applicant who previously applied to another certifying agent and received a notification of non-compliance or denial of certification has submitted documentation to support the correction of any non-compliance; and
- 4) CDA will schedule an on-site inspection of the operation to determine whether the applicant qualifies for certification,

### On-Site Inspections

CDA will 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. An on-site inspection is conducted annually thereafter for each certified operation that produces or handles organic products for the purpose of determining whether to approve the request for certification or whether the certification of the operation shall continue. CDA may require that additional inspections be performed for the purpose of determining compliance with the NOP.

CDA will conduct its initial on-site inspection within a reasonable time following a determination that the applicant appears to comply or may be able to comply with the requirements of the National Organic Program. CDA will conduct the inspection when the land, facilities and activities that demonstrate compliance can best be observed. CDA will conduct on-site inspections when an authorized representative of the operation who is knowledgeable about the operation is present.

The on-site inspection of an operation must verify:

- 1) The operation's compliance with the Act and NOP rule;
- 2) The information, including the organic production or handling system plan accurately reflects the practices to be used by the applicant for certification or by the certified operation;
- 3) That prohibited substances have not been or are not being applied to the operation;
- 4) CDA may take random samples for residue analysis to verify that such substances have not been used;
- 5) CDA inspectors will conduct an exit interview with an authorized representative of the operation to confirm the accuracy and completeness of inspection observations and information gathered during the on-site inspection. CDA inspectors will also address the need for any additional information as well as issues and concerns;

- 6) At the time of the inspection, the inspector shall provide the operations authorized representative with a receipt for any samples taken by the inspector. There shall be no charge to the applicant for the samples taken;

As part of the inspection, audits are performed to identify source of product. An audit trail must document, sufficient to determine transfer of ownership and transportation of any agricultural product labeled as “100 percent organic”, “organic” or “made with organic (specified ingredients)”.

Following the on-site inspection, the inspector is required to write a report for all initial certification applicants. If it is a renewal application, the inspector must insure the inspection report form is fully completed and may attach an additional write-up or full report if they feel it necessary.

A copy of the on-site inspection report and any test results are sent to the operation by CDA. This is generally done when the certification decision is sent to the operation.

#### Granting Certification

Within a reasonable time after the completion of the on-site inspection, CDA will review the on-site inspection report, the results of any analysis conducted, and any additional information requested by the CDA or supplied by the applicant. If CDA determines that the organic system plan and all procedures and activities of the operation are in compliance with the NOP and the operation is able to conduct operations in accordance with the plan, CDA shall grant certification. The certification may include minor non-compliances to be remedied within a specified time period as a condition of continued certification.

In deciding whether to grant certification, CDA will accept the certification decisions made by another certifying agent accredited or accepted by USDA pursuant to §205.500.

CDA will issue a certificate of organic certification, which specifies:

- 1) the name and address of the certified operation;
- 2) the effective date of certification;
- 3) the categories of organic operation, including crops, wild crops, livestock or processed products produced by the operation; and
- 4) the name, address, telephone number and internet address of CDA;
- 5) the Anniversary date (the date when the certified operation was last inspected which is the date in which the operation is required to submit their next annual update);
- 6) certified organic products covered under the organic certification as well as the label classification for organic products – 100% Organic, Organic or Made with Organic;
- 7) the statement – “Certified Organic under the US National Organic Program 7 CFR Part 205”; and
- 8) the statement – “Once certified, a production or handling operation’s organic certification continues in effect until surrendered, suspended or revoked”.

#### Withdrawal of Application

An applicant may withdraw their application at any time. If an applicant withdraws their application after the on-site inspection has been conducted, then a refund will be forfeited.

If however, an applicant withdraws their application prior to the on-site inspection, then a refund will be issued. An applicant that voluntarily withdraws its application prior to the issuance of a notice of noncompliance will not be issued a notice of noncompliance. Also, an applicant that voluntarily withdraws its application prior to the issuance of a notification of denial will not be issued a notice of certification denial.

#### Denial of certification

When CDA has reason to believe, based on a review of the information specified in §205.402 or §205.404 that an applicant for certification is not able to comply or is not in compliance with the requirements of this part, CDA will provide a written notification of noncompliance to the applicant. When correction of a noncompliance is not possible, CDA will combine the notification of noncompliance and a notification of denial of certification in one notification.

The notification of noncompliance that CDA issues will provide:

- (1) A description of each noncompliance;
- (2) The facts upon which the notification of noncompliance is based; and
- (3) The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

When CDA receives a response from the applicant to the Notice of Noncompliance, CDA will evaluate the applicant's corrective actions taken and supporting documentation submitted or the written rebuttal. If necessary an on-site inspection will be conducted.

When the corrective action or rebuttal is sufficient for the applicant to qualify for certification, CDA will issue the applicant an organic certificate with the required elements.

When the corrective action or rebuttal is not sufficient for the applicant to qualify for certification; CDA will issue the applicant a written notice of denial of certification. In addition, when an applicant fails to respond to the notification of noncompliance, CDA will issue a written notice of denial of certification. In all instances the CDA will provide notice of approval or denial to the Administrator.

Any notice of denial of certification issue by CDA will state the reason(s) for denial and the applicant's right to:

- (1) reapply for certification pursuant to §§205.401 and 205.405(e);
- (2) request mediation pursuant to §205.663; or
- (3) file an appeal of the denial of certification pursuant to §205.681.

When CDA receives a new application for certification, which includes a notification of noncompliance or a notice of denial of certification, CDA will treat the application as a new application and begin a new application process pursuant to §205.402.

If CDA has reason to believe that an applicant for certification has willfully made a false statement or otherwise purposefully misrepresented the applicant's operation or its compliance with the certification requirements pursuant to this part, the certifying agent may deny certification pursuant to paragraph (c)(1)(ii) of this section without first issuing a notification of noncompliance.

### Continuation of certification

All operations certified by CDA will be required to submit an annual update of the operation's Organic System Plan, according to the Organic System Plan Update Procedures. Following the receipt of the information required of an applicant for continuation of certification, CDA will within a reasonable time, review the information for completeness and sufficiency and conduct an on-site inspection of the certified operation: *except*, that, when it is impossible for CDA to conduct the annual on-site inspection, CDA will 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. However in this case, the annual on-site inspection will be conducted within the first 6 months following the certified operation's scheduled date of annual update.

If CDA 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 NOP rule, CDA will provide a written notification of noncompliance to the operation in accordance with §205.662.

If CDA 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).

### Compliance Procedures

Each notification of noncompliance, rejection of mediation, noncompliance resolution, proposed suspension or revocation, and suspension or revocation issued and each response to such notification will be sent to the recipient's place of business via a delivery service which provides dated returned receipts. CDA will use the electronic mailing service RPost for issuing Notices to all operations with valid email addresses. If there is no valid email address, the Notice shall be sent via US Postal Service, return receipt.

When documentation is received that the noncompliance has been received by the operation, a copy of the documentation shall be saved electronically in the operation's Company Specific Information in the shared organic folder on the CDA server.

When a certified operation demonstrates that each noncompliance has been resolved, CDA shall send the certified operation a written notification of noncompliance resolution. In addition, all notice of noncompliances and resolutions are provided to the NOP program.

### Combined Notice of Noncompliance and Notice of Proposed Suspension

CDA will issue a Combined Notice of Noncompliance and Notice of Proposed Suspension only in the case of an egregious, willful act has been committed and documented. The case information and all documentation will be reviewed by the Organic Program manager in consultation with Colorado Dept. of Agriculture Organic Program staff prior to issuing the combined notice. The Notice of

Proposed Suspension may apply to the entire operation or a portion of the operation as applicable to the noncompliance.

The Combined Notice will outline the operation's right to request mediation and/or appeal as outlined in §205.663 and §205.681. CDA will attempt to reach a settlement agreement through the mediation process. If there is no response by the 30 day deadline, a Notice of Suspension will be issued.

### Suspension or Revocation

When rebuttal of a noncompliance is unsuccessful or correction of noncompliance is not completed within the prescribed time period, CDA will send the certified operation a written notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the noncompliance. When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or revocation of certification may be combined in one notification. The notification of proposed suspension or revocation of certification will state:

- 1) the reason or reasons for the proposed suspension or revocation;
- 2) the proposed effective date of such suspension or revocation;
- 3) the impact of a suspension or revocation on future eligibility for certification; and
- 4) the right to request mediation or file an appeal.

CDA will not send a notification of suspension or revocation to a certified operation that has requested mediation or filed an appeal to the Secretary while final resolution of either is pending. The CDA will send a notification of suspension or revocation if there was no response to the proposed suspension or proposed revocation or if the response did not resolve the noncompliance found. The notification of suspension or revocation will state:

- 1) the effective date of the suspension or revocation;
- 2) the impact of the suspension or revocation;
- 3) the length of time of the suspension or revocation, if applicable; and
- 4) the right to request reinstatement.

### Willful Violations

If CDA has reason to believe that a certified operation has willfully violated the Act or regulations, CDA shall send the certified operation a notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the non-compliance.

### Mediation

CDA notifies each applicant that any dispute with respect to denial of certification or proposed suspension or revocation of certification may be mediated at the request of the applicant for certification or certified operation and with acceptance by CDA. The applicant is notified that mediation shall be requested in writing to CDA. If CDA rejects the request for mediation, CDA will provide written notification to the applicant for certification or certified operation. CDA will provide written notification advising the applicant of the right to request an appeal within 30 days



of the date of the written notification of rejection of the request for mediation. If mediation is accepted by CDA such mediation shall be conducted by a qualified mediator mutually agreed upon by the parties to the mediation. The parties to the mediation shall have no more than 30 days to reach an agreement following a mediation session. If mediation is unsuccessful, the applicant for certification or certified operation shall have 30 days from termination of mediation to appeal CDA's decision. Any agreement reached during or as a result of the mediation process shall be in compliance with the Act and the NOP rules. The Secretary may review any mediated agreement for conformity to the Act and the regulations and may reject any agreement or provisions not in compliance with the Act or regulations.

### Appeals

CDA notifies all persons subject to the Act that if they believe they are adversely affected by a non-compliant decision of CDA may appeal such decision to the Administrator.

### Eligibility for Reinstatement of Suspension

CDA notifies certified operations whose certification has been suspended may at any time, unless otherwise stated in the notification of suspension, submit a request to the Secretary for a reinstatement of its certification. The request must be accompanied by evidence demonstrating correction of each non-compliance and corrective actions taken to comply with and remain in compliance with the Act and the regulations.

In addition, CDA notifies the certified operation that a person responsibly connected with an operation whose certification has been revoked will be ineligible to receive certification for a period of five 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.

## **Public Statements Regarding Certification**

The CDA will refrain from making false or misleading claims about its accreditation status, the USDA accreditation program for certifying agents, or the nature or qualities of products labeled as organically produced.

## **International**

### Japan Export Arrangement

Plants (including fungi) and processed foods of plant origin may be exported to Japan under the USDA-Japan Equivalency Arrangement. The Colorado Department of Agriculture may issue a TM-11 export certificate to certified organic producers and handlers who request verification of organic export regulations and comply with all pertinent regulations. Only products with 95% or more organic product are eligible for export under this arrangement.

Products exported to Japan must carry the JAS seal, which may be affixed in one of two ways:

- US Exporters who have a contract with a JAS-certified importer may apply the JAS logo directly; OR

- US Exporters who do not have a contract with a JAS-certified importer may NOT apply the JAS seal; the product must be imported by a JAS-certified importer who must apply the logo prior to sale in Japan.

Alcohol products certified to the USDA National Organic Program and labeled with the word “Organic” in English may be exported without an export certificate. If the word “organic” is in the Japanese language, the product must be accompanied by an export certificate with the following information:

- Name of the certified alcoholic beverage
- Name and address of the distillery or brewery
- Certificate number and date
- Name and address of operator
- Country of origin
- Name and address of organic certifying agent

Please note that the TM-11 would meet these requirements.

#### Canada Equivalency Arrangement

Under an equivalency arrangement signed by the USDA and Canadian Food Inspection Agency (CFIA), raw agricultural products and processed products that are certified to the USDA National Organic Standards, are not required to obtain additional Canadian certification. Full implementation of the U.S. - Canada arrangement came into effect on July 1, 2011.

In addition to certification to the USDA organic regulations, products must meet the following requirements in order to be sold as organic in Canada:

- Crops must be produced without sodium nitrate.
- Crops must not be grown using hydroponic or aeroponic production methods.
- Agricultural products derived from animals must be produced according to Canadian livestock stocking rates.

The CDA will sign an Affidavit for compliance for operations that are certified organic by the CDA once the operation’s organic plan has been reviewed to verify that the above requirements have been met.

The statement “Certified in compliance with the terms of the US-Canada Organic Equivalency Arrangement” is on the affidavit. All operations upon receipt of the affidavit are notified that they can write this statement on a bill of lading, purchase organic or any other affirmative attestation.

#### EU Equivalency Arrangement

Under an equivalency arrangement signed by USDA and the European Union Commission agriculture products certified to the USDA National Organic Standards are not required to obtain additional certification to market the products as organic in the European. Full implementation of the US- EU Equivalency Arrangement came into effect on June 1, 2012.

In addition to certification to the USDA organic regulations, products must meet the following requirements in order to be sold as organic in the European Union:

- Products must have an EU import certificate that has been completed by a USDA-accredited certifying agent. CDA will complete electronic certificates of inspection in the EU TRACES system beginning no later than October 19, 2017.
- Products must be either produced within the US or have had final processing or packaging occur within the US.
- Organic wine and wine “made with organic grapes” may be exported to the EU only if the wine contains 100% organic grapes and organic ingredients (non-organic substances not listed under §205.605 are prohibited), AND the must have been produced using the winemaking practices and substances detailed in the EU organic regulations.

As all products traded under the partnership must be accompanied by an organic import certificate, the CDA will the review of organic systems plan as well as the most recent inspection report to determine compliance with the US-EU Arrangement.

#### Korean Equivalency Arrangement

Under an equivalency arrangement signed by the USDA and Korean Ministry of Agriculture, Food, and Rural Affairs (MAFRA), raw agricultural products and processed products that are certified to the USDA National Organic Standards, are not required to obtain additional Korean certification. Full implementation of the U.S. - Korea arrangement came into effect on July 1, 2014.

In addition to certification to the USDA organic regulations, products must meet the following requirements in order to be sold as organic in Korea:

- Are certified to the USDA or Korean organic regulations
- Are “processed products” as defined by the Korean Food Code
- Contain at least 95 percent organic ingredients
- Have their final processing (as defined in the Korean Food Code) occur in the U.S. or Korea

The CDA will complete the NAQS Import Certificate of Organic Processed Foods for CDA-certified operations demonstrating compliance with the above noted restrictions.

#### **Current Fee Schedule** (effective October 2015)

Three parts to the fee schedule exist:

##### 1. Base fee

The base fee is the base charge which is dependent upon the amount of applications the operation is submitting. The first application (base) is \$400.00. Additional categories are each an additional \$200.00.

##### 2. Category fee

The category fee is determined by the primary category, which is the part of the operation that produces the most income. This amount is determined by what tier the operation meets. There are three tiers for each category; \$400.00, \$850.00 or \$2100.00. This amount is in addition to the

base fee.

3. Inspection fee	
Hourly fee for inspection	\$34.00
Hourly fee for driving time	\$34.00
Mileage	\$ 0.25
Per diem	Based on State rate

### **Unannounced Organic Inspections** (effective September 2012) NOP 2609

1. The CDA will conduct unannounced inspections of 5 percent of the total certified operations per year. This is approximately one inspection per multiple inspector.
2. The unannounced inspections will include a broad spectrum of production types, products, and locations.
3. The CDA will not accept applications for certification from locations that the CDA are unable and unwilling to conduct unannounced inspections.
4. The operations chosen will be random, risk based or a result of a complaint. The CDA will disclose to the operation the reason that the operation was chosen for the announced inspection.
  - a. Criteria for conducting an unannounced inspection of an operation may include:
    - i. Previous noncompliance issues
    - ii. Complaints
    - iii. Organic and nonorganic production or handling, especially of visually indistinguishable varieties
    - iv. Risk of contamination from adjoining land use or commingling or contamination during handling
    - v. Complexity of operation
  - b. Unannounced inspections may be utilized to fulfill the requirements for an annual on-site monitoring inspections; this will only be accomplished if the inspector is able to conduct a full inspection of the operation.
5. The inspector will be directed to the portion of the operation to review during the unannounced inspection. This may be limited in scope, depth, breadth and may cover only certain aspects of the operation, such as parcels, facilities or products.
6. The inspector will complete the Unannounced Inspection Report. The report will be sent to the operation, reviewed by the CDA and the results communicated to the operation pursuant to 205.403(e), 205.404(a).
7. Inspectors may conduct samplings. If the visit to the operation is to be considered as both an instance of sample collection and an unannounced inspection, the inspector will conduct a full inspection of the operation.

8. If the operation is located more than 15 miles outside of the inspector's territory, the inspector will provide prior notification upon arrival, consisting of no more than four (4) hours. Also, if the inspector has already traveled to the area the operation is located in for other inspections, then the inspector will arrive at the operation without prior notification.
9. NOP Guidance Document 2609 Unannounced Inspections states in Sec. 4.1.11 that inspectors should not enter private property without permission and have adequate identification (business card and name tag). It also follows the state of Colorado trespassing laws involving state employees on private property.
10. The CDA written policy on unannounced inspections has been provided to certified operations and inspectors.

## Schurkamp, Lynnea - AMS

---

**From:** Kieft - CDA, Janis <janis.kieft@state.co.us>  
**Sent:** Friday, November 3, 2017 6:21 PM  
**To:** Davis, Graham - AMS  
**Subject:** Updated Letter and CDA Policy Manual  
**Attachments:** Updated Response letter NOP Notice of Noncompliance Nov. 3 2017.pdf; CDA Organic Policy and Procedures Manual Rev 11.3 .2017.docx

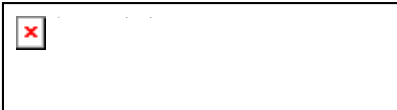
Hi Graham,

Attached is the updated letter of Sept. 1 referring to AIA17228GD.NC1 and the updated Policy Manual to include the language about when correction of a noncompliance is not possible and removing the option to rebut when issuing a combined NONC + NOPS (pages 17-18).

Please let me know if you have any questions.

Janis  
303-869-9074

Janis Kieft  
Organic Program Manager  
Division of Plant Industry



P 303.869.9074 | F 303.466.2860

305 Interlocken Parkway, Broomfield, CO 80021  
[janis.kieft@state.co.us](mailto:janis.kieft@state.co.us) | [www.colorado.gov/ag/dpi](http://www.colorado.gov/ag/dpi)



# Organic Program Policy and Procedures Manual

Developed April 2003  
Revised November, 2017

## Table of Contents

Colorado Department of Agriculture Mission Statement .....	3
Administration .....	3
Organic Advisory Committee.....	3
History of Organic Certification in Colorado .....	3
Authority and Scope of the CDA Organic Program .....	3
Policies of the CDA Organic Program.....	4
CDA Organic Program Procedures.....	8
Personnel Used in the Organic Program.....	8
Annual Program Review.....	9
Annual Report to NOP.....	9
Providing Information to Persons Seeking Certification .....	10
Record Keeping and Document Control.....	10
Confidentiality .....	11
Conflict of Interest .....	11
Investigation of Certified Operations.....	12
Inspection and Testing, Reporting, and Exclusion from Sale.....	12
CDA Certification Process.....	13
Public Statements Regarding Certification.....	19
International.....	19
Current Fee Schedule.....	21
Unannounced Inspections.....	22



## **Colorado Department of Agriculture Mission Statement**

The mission of the Colorado Department of Agriculture (CDA) is to strengthen and advance Colorado's agriculture industry; ensure a safe, high quality, and sustainable food supply; and protect consumers, the environment, and natural resources.

### **Administration**

Administration of the Department is under the direction, control, and management of the Commissioner of Agriculture appointed by the Governor. The Department is divided into seven Divisions and the Commissioner's office to provide for the efficient administration of the Department's business.

The organic program is operated as part of the Department's Plant Industry Division. The Division performs a number of regulatory and market access functions including protecting human health, environmental protection, consumer protection and providing certification for market access.

### **Organic Advisory Committee**

As part of the authorizing legislation to seek accreditation, the Colorado General Assembly required that the CDA maintain an Organic Certification Advisory Committee. The General Assembly changed the composition of the committee during the 2010 legislative session to better represent CDA's certified clients. The twelve member committee is made up of 9 organic producers (in proportion to the number of certified entities in each category) and other organic industry representatives; one representative from the CSU extension service; one representative from the CSU research centers; and a member of the general public. This committee assists the CDA in setting certification fees to be charged and advises the CDA in matters relating to organic production, processing and handling as well as marketing opportunities.

These members receive only actual travel costs to and from the meeting as compensation. Records are kept of the advisory committee meetings.

### **History of Organic Certification in Colorado**

The CDA has operated an organic certification program since 1990. From 1990 to October 2002, the CDA certified only crops according to the Colorado Organic Certification Act and associated rules. In October of 2002, CDA received accreditation under the USDA to be an accredited certifier as part of The Organic Food Production Act of 1990 and 7 CFR 205. On June 26, 2009 CDA received reaccreditation from the USDA NOP. CDA continues to operate in this capacity.

### **Authority and Scope of the CDA Organic Program**

Authority was granted to the Colorado Department of Agriculture (CDA) by the 2002 General

Assembly to carry out House Bill 02-1186, Section 3, 35-11.5-103 (9) “State Organic Certification Program” or “State Certification” means the program that implements 7 U.S.C. Sec. 6501 et seq. and 7 CFR Part 205 in Colorado in order that the state certify organic producers pursuant to 7 U.S.C. Sec. 6507.

In House Bill 02-1186, section 35-11.5-116. Accreditation states: The Commissioner shall seek accreditation from the Secretary and shall create and submit a plan for the establishment of a State Organic Certification program to the Secretary for approval pursuant to 7 U.S.C. Sec. 6507. The Commissioner received initial accreditation to operate an organic program from USDA on October 16, 2002. CDA received reaccreditation from the USDA on June 26, 2009.

The Colorado Organic Standards is a state certification program controlled by the state Department of Agriculture. It is the intent of CDA to review and monitor those persons or entities seeking to acquire or maintain organic certification under 7 CFR Part 205 National Organic Program (NOP) regulations, whenever those operations are within CDA’s area of accreditation, geographic area of operations and within resource limits. CDA is accredited in all four areas of operation under the NOP including:

- 1) the certification of crops;
- 2) the certification livestock;
- 3) the certification of wild crop harvesting; and
- 4) the certification of processing/handling.

## **Policies of the CDA Organic Program**

- 1) The Organic Foods Productions Act of 1990 (Act) and 7 CFR 205, the NOP rules, are the basis for all certification decisions and all necessary steps will be made to comply with NOP rules. In additions, CDA will comply with, implement and carry out any other terms and conditions determined by the Agriculture Marketing Service (AMS) Administrator.
- 2) The CDA will demonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart.
- 3) The CDA will carry out the provisions of the Act and the regulations in this part, including the provisions of §205.402 through 205.406 and §205.670.
- 4) The CDA will maintain a staff with sufficient expertise in organic production and handling techniques to fully comply with and implement the terms and conditions of the organic certification program established under the Act and the NOP rule. The staff will consist of adequately trained individuals, including inspectors, certification review officials and administrative personnel. CDA will ensure employees have sufficient expertise in organic production or handling techniques to successfully perform the duties assigned.
- 5) The CDA will conduct an annual performance evaluation of all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate

qualifications for certification, make recommendations concerning certification, or make certification decisions and implement measures to correct any deficiencies in certification services.

- 6) The CDA will have an annual program review of its certification activities conducted by the certifying agent's staff, an outside auditor, or a consultant who has expertise to conduct such reviews and implement measures to correct any noncompliances with the Act and the regulations in this part that are identified in the evaluation.
- 7) The CDA will provide sufficient information to persons seeking certification to enable them to comply with the applicable requirements of the Act and the regulations in this part.
- 8) The CDA will maintain all records pursuant to §205.510(b) and make all such records available for inspection and copying during normal business hours by authorized representatives of the Secretary and the applicable State organic program's governing State official.
- 9) The CDA will maintain strict confidentiality with respect to its clients under the applicable organic certification program and not disclose to third parties (with the exception of the Secretary or the applicable State organic program's governing State official or their authorized representatives) any business-related information concerning any client obtained while implementing the regulations in this part, except as provided for in §205.504(b)(5).
- 10) The CDA will prevent conflicts of interest by:
  - (i) Not certifying a production or handling operation if the certifying agent or a responsibly connected party of such certifying agent has or has held a commercial interest in the production or handling operation, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;
  - (ii) Excluding any person, including contractors, with conflicts of interest from work, discussions, and decisions in all stages of the certification process and the monitoring of certified production or handling operations for all entities in which such person has or has held a commercial interest, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;
  - (iii) Not permitting any employee, inspector, contractor, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected: Except, That, a certifying agent that is a not-for-profit organization with an Internal Revenue Code tax exemption or, in the case of a foreign certifying agent, a comparable recognition of not-for-profit status from its government, may accept voluntary labor from certified operations;
  - (iv) Not giving advice or providing consultancy services, to certification applicants or certified operations, for overcoming identified barriers to certification;
  - (v) Requiring all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and all parties responsibly connected to the certifying agent to complete an annual conflict of interest disclosure report; and
  - (vi) Ensuring that the decision to certify an operation is made by a person different from

those who conducted the review of documents and on-site inspection.

- 11) (i) The CDA will reconsider a certified operation's application for certification and, if necessary, perform a new on-site inspection when it is determined, within 12 months of certifying the operation, that any person participating in the certification process and covered under §205.501(a)(11)(ii) has or had a conflict of interest involving the applicant. All costs associated with a reconsideration of application, including onsite inspection costs, shall be borne by the certifying agent.  
(ii) Refer a certified operation to a different accredited certifying agent for recertification and reimburse the operation for the cost of the recertification when it is determined that any person covered under §205.501(a)(11)(i) at the time of certification of the applicant had a conflict of interest involving the applicant.
- 12) The CDA will accept the certification decisions made by another certifying agent accredited or accepted by USDA pursuant to §205.500.
- 13) The CDA will refrain from making false or misleading claims about its accreditation status, the USDA accreditation program for certifying agents, or the nature or qualities of products labeled as organically produced.
- 14) The CDA will submit to the Administrator a copy of:
  - (i) Any notice of denial of certification issued pursuant to §205.405, notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation sent pursuant to §205.662 simultaneously with its issuance; and
  - (ii) A list, on January 2 of each year, including the name, address, and telephone number of each operation granted certification during the preceding year.
- 15) The CDA will only charge applicants for certification and certified production and handling operations only those fees and charges for certification activities that it has filed with the Administrator.
- 16) The CDA will pay and submit fees to AMS in accordance with §205.640.
- 17) The CDA will provide the inspector, prior to each on-site inspection, with previous on-site inspection reports and notify the inspector of its decision regarding certification of the production or handling operation site inspected by the inspector and of any requirements for the correction of minor noncompliances.
- 18) The CDA will accept all production or handling applications that fall within its area(s) of accreditation and certify all qualified applicants, to the extent of its administrative capacity to do so without regard to size or membership in any association or group.
- 19) The CDA has a seal that may be used by production and handling operations certified by CDA to indicate affiliation with our program. However CDA will not:

- (i) require use of the seal or any other CDA identifying mark on any product sold, labeled, or represented as organically produced as a condition of certification; and
  - (ii) require compliance with any production or handling practices other than those provided for in the Act and the NOP rules as a condition of use of its identifying mark. However, should CDA require more restrictive requirements, approved by the Secretary, CDA shall require compliance with such requirements as a condition of use of their identifying mark by such operations.
  - (iii) Use of the CDA seal on products certified in the “Made with Organic (Ingredients or Ingredient Categories)” is not allowed on the principle display panel of packaged products. Other use of the CDA seal on such products will be considered on a case-by-case basis.
- 20) The CDA will not exclude from participation in or deny the benefits of the National Organic Program to any person due to discrimination because of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status.
- 21) The CDA will submit annually to the administrator on or before the anniversary date of the issuance of the notification of accreditation, the following reports and fees:
- (i) a complete and accurate update of information submitted pursuant to 205.503 and 205.504;
  - (ii) information supporting any changes being requested in the areas of accreditation;
  - (iii) a description of the measures implemented in the previous year and any measures to be implemented in the coming year to satisfy any terms and conditions determined by the administrator to be necessary, as specified in the most recent notification of accreditation or notice of renewal of accreditation;
  - (iv) the results of the most recent performance evaluations and annual program review and a description of adjustments to the certifying agent’s operation and procedures implemented or to be implemented in response to the performance evaluations and program review; and
  - (v) the fees required in 205.640 (a).
- 22) The CDA will maintain records according to the following schedule:
- (i) records obtained from applicants for certification and certified operations will be maintained for not less than 5 years beyond their receipt;
  - (ii) records created by CDA regarding applicants for certification and certified operations will be maintained for not less than 10 years beyond their creation; and
  - (iii) records created or received by CDA pursuant to the accreditation requirements will be maintained for not less than 5 years beyond their creation or receipt.
- 23) The CDA will only charge reasonable fees for certification. Fees will be set through the Colorado Administrative Procedures Act to ensure public notification and opportunity for participation.
- 24) The CDA will only charge certified production and handling operations those fees and charges that it has filed with the Administrator.
- 25) CDA shall provide each applicant with an estimate of the total cost of certification and an

estimate of the annual cost of updating the certification.

- 26) The CDA will provide all persons inquiring about the application process with a copy of our fee schedule.

## **CDA Organic Program Procedures**

### **Personnel Used in the Organic Program**

The Plant Industry Division utilizes employees with expertise in organic production and the NOP rules.

#### Inspection Personnel

Inspectors who perform the organic inspection are required to be knowledgeable in broad agricultural practices. Criteria for employment are a four-year degree in an agricultural or closely related field or equivalent experience. Once hired, the inspector must go through extensive training prior to being able to conduct inspections on his or her own. The training program involves studying the NOP rules, observing journeyman inspectors conducting inspections, and an apprenticeship program of conducting inspections in the presence of a journeyman inspector or the inspector supervisor. The inspector cannot conduct inspections on their own until the inspector supervisor and organic program manager agree the person is adequately prepared. This determination will also involve input from the journeyman inspectors who the employee worked with. The Director of the Division will advance apprentice inspectors to the journeyman classification when they feel training is adequate.

During the 2010 legislative session, CDA was granted authority by the General Assembly to utilize contract inspectors for organic certification work in the case this becomes necessary.

#### Certification Review Personnel

Individuals charged with the initial review of applications or making certification decisions are required to have a four-year degree in an agricultural or closely related field or equivalent experience. These individuals also must have training on the NOP rules prior to performing their functions. The individuals are typically staff members who have several years of experience with the program.

#### Administrative Personnel

These individuals are not required to perform technical functions related to the certification and therefore aren't required to have agricultural expertise. However, they are trained in general NOP requirements so that they can answer routine general certification questions.

#### Ongoing Staff Training

Inspector meetings are generally held semi-annually to discuss pertinent issues of the past 6 months and cover general program items and changes. This training and discussion is internally led.

Staff also attends NOP training as often as possible. The program manager primarily attends these training sessions but other personnel may attend. In addition, inspectors may be sent to outside training such as training offered through the International Organic Inspectors Association.

### Staff Evaluation

All staff must have a performance plan in place at all times. This plan states the expectations of the person for the upcoming year. The person must receive an interim evaluation during the course of the year to determine how they are performing. A final evaluation is conducted at the end of the year. Should the person receive an interim or final evaluation of “needs improvement” a performance improvement plan must be developed.

All field staff (inspectors) shall have, at least annually, a field evaluation conducted. This evaluation will be conducted during the course of an annual inspection of a crop, livestock, or processing operation. Each inspector will be field evaluated by one of the following: the CDA Field Services Supervisor, the CDA Organic Program Manager, a CDA Lead Inspector, or a CDA Multiple Inspector. The field evaluation will use the Organic Field Inspector Evaluation form to conduct the review. Any indication of Needs Improvement will be communicated by the Organic Program Manager to the Field Services Supervisor for development of a training plan for the areas needing improvement.

### **Annual Program Review**

The CDA conducts an annual program review of its certification activities. This review is typically conducted by the department’s staff. CDA ensures that the individual(s) who conducts the review has expertise to conduct such a review. Based on the review, CDA implements the required measures to correct any noncompliances with the Act and the NOP rule. CDA also uses this evaluation as a way to identify process and performance improvement opportunities.

### **Annual Report to NOP**

CDA will submit annually to the administrator on or before the anniversary date of the issuance of the notification of accreditation (October 16), the following reports and fees:

- 1) a complete and accurate update of information submitted pursuant to 205.503 and 205.504;
- 2) information supporting any changes being requested in the areas of accreditation;
- 3) a description of the measures implemented in the previous year and any measures to be implemented in the coming year to satisfy any terms and conditions determined by the administrator to be necessary, as specified in the most recent notification of accreditation or notice of renewal of accreditation;
- 4) the results of the most recent performance evaluations and annual program review and a description of adjustments to the certifying agent’s operation and procedures implemented or to be implemented in response to the performance evaluations and program review; and
- 5) the fees required in 205.640 (a).

This effort is conducted under the direction of the Organic Program Manager.

## **Providing Information to Persons Seeking Certification**

The CDA will provide sufficient information to persons seeking certification to enable them to comply with the applicable requirements of the Act and the NOP rules.

### Certification Packet

Applicants who request information on certification are supplied a packet either via the U.S. Post Office or email. The packet contains a copy of the regulations, a letter of instructions outlining requirements for application, an Organic System Plan comprised of all current modules, an inspection appointment form, and a schedule of the fees. The letter of instruction includes the fee schedule required for application and the mailing address for application submission, estimate of inspection costs, and lists necessary information required for application.

Contact information for organic program personnel are also provided so the applicant can ask further questions. Depending on the request, additional information may also be provided such as where to access other websites with organic information.

## **Record Keeping and Document Control**

The CDA will maintain all records pursuant to §205.510(b) and make all such records available for inspection and copying during normal business hours by authorized representatives of the Secretary.

CDA will maintain records according to the following schedule:

- 1) records obtained from applicants for certification and certified operations will be maintained for not less than 5 years beyond their receipt;
- 2) records created by CDA regarding applicants for certification and certified operations will be maintained for not less than 10 years beyond their creation; and
- 3) records created or received by CDA pursuant to the accreditation requirements will be maintained for not less than 5 years beyond their creation or receipt.

To date CDA has kept all records related to the NOP program since we received accreditation on October 16, 2002. The CDA keeps the most recent 3 years within the building and have an off-site storage location for the other records since accreditation was received.

All forms, policies and procedures will be organized in a Document Control System. Each document shall be assigned a Document Control Number, Revision, date of release, and document name. A master spreadsheet of all documents will be maintained with the Document Control number, date of release, document name, and revision; all staff will be expected to only use the most current revision of all forms. When a form is revised or made obsolete due to changes in regulations or procedures, it will be moved to an electronic archive, and all employees will be notified of the new document update via email.



## **Confidentiality**

The CDA maintains strict confidentiality with respect to its clients under the organic certification program and does not disclose to third parties (with the exception of the Secretary or his authorized representatives) any business-related information concerning any client obtained while implementing the regulations in this part, except as provided for in §205.504(b)(5).

If a request is made for the information allowed for in §205.504(b)(5), the department requires that request to meet the requirements of the Colorado Open Records Act.

Information available to the public through requests under the Open Records Act is:

- 1) certification certificates issued during the current and 3 preceding calendar years;
- 2) list of producers/handlers whose operations CDA has certified, including for each the name and type(s) of operation, products produced, and the effective date of the certification, during the current and 3 preceding calendar years;
- 3) the results of laboratory analyses for residues of pesticides and other prohibited substances conducted during the current and 3 preceding calendar years; and
- 4) other business information as permitted in writing by producer/handler.

### Release of documents for review by other certifiers

When another certifying agency requires records of a certified producer, the department will require a written request by that certifying agency. Such request will include the name of the client requested, current address, and phone number. Also required is a reason for the request, and how that information will be used. A confidentiality statement is required to accompany the request.

## **Conflict of Interest**

Upon hiring, all employees associated with the organic program are instructed on the importance of avoiding conflicts of interest and that disclosure of any conflicts of interest are required. All employees are required to complete and sign a conflict of interest disclosure report annually. This report must identify any food or agriculture-related business interests, including business interests of immediate family members, which cause a conflict of interest.

The CDA will not certify a production or handling operation if the certifying agent or a responsibly connected party of such certifying agent has or has held a commercial interest in the production or handling operation, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;

The CDA will exclude any person, including contractors, with conflicts of interest from work, discussions, and decisions in all stages of the certification process and the monitoring of certified production or handling operations for all entities in which such person has or has held a commercial interest, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification.

When a conflict of interest is discovered, the CDA will perform one of the following actions: 1) the CDA will reconsider a certified operation's application for certification and, if necessary, perform a new on-site inspection. All costs associated with a reconsideration of application, including onsite inspection costs, shall be borne by CDA. 2) refer a certified operation to a different accredited certifying agent for recertification and reimburse the operation for the cost of the recertification.

The CDA will not permit any employee, inspector, contractor, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected.

The CDA will not give advice or providing consultancy services, to certification applicants or certified operations, for overcoming identified barriers to certification. CDA requires all employees to sign a no coaching policy at the beginning of their employment.

The CDA will ensure that the decision to certify an operation is made by a person different from those who conducted the review of documents and on-site inspection. One individual is assigned to conduct the initial review of the application, a separate individual forms the inspection and a third separate individual makes the certification decision.

## **Investigation of Certified Operations**

CDA submits all complaints to National Organic Program via email. If the complaint is referred to the CDA by the NOP Compliance and Enforcement Branch, the CDA will investigate the complaint and report the findings to the CE Division along with documentation. CDA will follow section 8.2.1.4 in the NOP 4001 "Complaint Handling Procedure" as needed.

## **Inspection and Testing, Reporting, and Exclusion from Sale**

### Preharvest and Postharvest Residue Testing

CDA conducts preharvest and or postharvest testing of any agricultural input used or agricultural product to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" when we have reason to believe that the agricultural input or product has come into contact with a prohibited substance, has been produced using excluded methods or conducted randomly comprising no less than 5% of total certified operations. A CDA inspector collects any samples obtained. The inspector follows the CDA Residue Sampling Procedures and Guidelines document. Sample integrity is maintained throughout the entire process with appropriate chain of custody protocol. The residue testing is performed in CDA's Standards Laboratory that is accredited to ISO 17025:2005, *General Requirements for the Competence of Testing and Calibration Laboratories* (Current certificate on file). All chemical analysis is performed in accordance with the methods described in the most current edition of the *Official Methods of Analysis of the AOAC International* or other current applicable validated methodology determining the presence of contaminants in agricultural products. The CDA's Sampling Procedures comply with the NOP Guidance 2610 effective November 8, 2012.

Results of all analyses and tests performed are promptly provided to the Administrator. The results are all made available for public access, unless the testing is part of an ongoing compliance investigation.

If test results indicate a specific agricultural product contains pesticide residues or environmental contaminants that exceed the Food and Drug Administration's or the Environmental Protection Agency's regulatory tolerances, CDA promptly reports such data to the Federal health agency whose regulatory tolerance or action level has been exceeded.

#### Exclusion from organic sale

When residue testing detects prohibited substances at levels that are greater than 5 percent of the Environmental Protection Agency's tolerance for the specific residue detected or unavoidable residual environmental contamination, the agricultural product must not be sold, labeled, or represented as organically produced. The CDA will work with the Administrator, and any other agency officials to ensure these products are not sold, labeled or represented as organic.

#### Positive Tests under 5 percent of the Environmental Protection Agency tolerance

If the EPA has established a tolerance for the detected pesticide in the tested sample, and residue is detected at or below 5 percent of the EPA tolerance, the CDA shall:

1. Notify the certified operation of the test results.
2. Require the operation to provide an assessment of why the residue may be present.
3. If appropriate, consider a notice of noncompliance for the following violations:
  - a. § 205.202(c): inadequate buffer zones to prevent the unintended application of prohibited substances.
  - b. § 205.272: inadequate measures to prevent commingling or contamination of organic products. The notice should require corrective actions to prevent future contamination.
4. If residues are not a result of the application of prohibited pesticides, the product may be sold as organic
5. Retain the test results, which must be made available to the public upon request and will be reviewed as part of the next audit.
6. If assessment and corrective actions are not received within the time frame required per #2 above, Notice of Noncompliance will be issued for failure to comply with NOP 205.201(a)(6).

## **CDA Certification Process**

### Application Review Procedures

CDA will, within a reasonable time, review the application materials to ensure these materials contain all the elements required by NOP and the State Certification Program. The entire review process from the time the application is received until a certification decision is made may take approximately 120 days for initial applicants requesting certification. The length of time may be longer for renewal applicants because deadlines are implemented for organic systems plan renewals that are earlier than needed so that the CDA can process all plans in a timely manner.

### Application for Certification

A person seeking certification of a production or handling operation must submit an application to CDA for certification. The application must include the following:

- 1) An organic production or handling system plan;
- 2) The name of the person completing the application; the applicant's business name, address and telephone number and when the applicant is a corporation, the name, address and telephone

- number of the person authorized to act on the applicant's behalf; and
- 3) The name or names of any organic certifying agents to which application has previously been made; the year of application; the outcome of the application submitted including, when available, a copy of any notification of non-compliance or denial of certification issued to the applicant for certification; and a description of the actions taken by the applicant to correct non-compliance noted in the notification of non-compliance
  - 4) Other information necessary to determine compliance with the Act and regulations

### Review of Application

Upon acceptance of an application for certification, CDA will:

- 1) Review the application to ensure completeness;
- 2) Determine by review of the application materials whether the applicant appears to comply or may be able to comply with the applicable requirements;
- 3) Verify that an applicant who previously applied to another certifying agent and received a notification of non-compliance or denial of certification has submitted documentation to support the correction of any non-compliance; and
- 4) CDA will schedule an on-site inspection of the operation to determine whether the applicant qualifies for certification,

### On-Site Inspections

CDA will 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. An on-site inspection is conducted annually thereafter for each certified operation that produces or handles organic products for the purpose of determining whether to approve the request for certification or whether the certification of the operation shall continue. CDA may require that additional inspections be performed for the purpose of determining compliance with the NOP.

CDA will conduct its initial on-site inspection within a reasonable time following a determination that the applicant appears to comply or may be able to comply with the requirements of the National Organic Program. CDA will conduct the inspection when the land, facilities and activities that demonstrate compliance can best be observed. CDA will conduct on-site inspections when an authorized representative of the operation who is knowledgeable about the operation is present.

The on-site inspection of an operation must verify:

- 1) The operation's compliance with the Act and NOP rule;
- 2) The information, including the organic production or handling system plan accurately reflects the practices to be used by the applicant for certification or by the certified operation;
- 3) That prohibited substances have not been or are not being applied to the operation;
- 4) CDA may take random samples for residue analysis to verify that such substances have not been used;
- 5) CDA inspectors will conduct an exit interview with an authorized representative of the operation to confirm the accuracy and completeness of inspection observations and information gathered during the on-site inspection. CDA inspectors will also address the need for any additional information as well as issues and concerns;

- 6) At the time of the inspection, the inspector shall provide the operations authorized representative with a receipt for any samples taken by the inspector. There shall be no charge to the applicant for the samples taken;

As part of the inspection, audits are performed to identify source of product. An audit trail must document, sufficient to determine transfer of ownership and transportation of any agricultural product labeled as “100 percent organic”, “organic” or “made with organic (specified ingredients)”.

Following the on-site inspection, the inspector is required to write a report for all initial certification applicants. If it is a renewal application, the inspector must insure the inspection report form is fully completed and may attach an additional write-up or full report if they feel it necessary.

A copy of the on-site inspection report and any test results are sent to the operation by CDA. This is generally done when the certification decision is sent to the operation.

#### Granting Certification

Within a reasonable time after the completion of the on-site inspection, CDA will review the on-site inspection report, the results of any analysis conducted, and any additional information requested by the CDA or supplied by the applicant. If CDA determines that the organic system plan and all procedures and activities of the operation are in compliance with the NOP and the operation is able to conduct operations in accordance with the plan, CDA shall grant certification. The certification may include minor non-compliances to be remedied within a specified time period as a condition of continued certification.

In deciding whether to grant certification, CDA will accept the certification decisions made by another certifying agent accredited or accepted by USDA pursuant to §205.500.

CDA will issue a certificate of organic certification, which specifies:

- 1) the name and address of the certified operation;
- 2) the effective date of certification;
- 3) the categories of organic operation, including crops, wild crops, livestock or processed products produced by the operation; and
- 4) the name, address, telephone number and internet address of CDA;
- 5) the Anniversary date (the date when the certified operation was last inspected which is the date in which the operation is required to submit their next annual update);
- 6) certified organic products covered under the organic certification as well as the label classification for organic products – 100% Organic, Organic or Made with Organic;
- 7) the statement – “Certified Organic under the US National Organic Program 7 CFR Part 205”; and
- 8) the statement – “Once certified, a production or handling operation’s organic certification continues in effect until surrendered, suspended or revoked”.

#### Withdrawal of Application

An applicant may withdraw their application at any time. If an applicant withdraws their application after the on-site inspection has been conducted, then a refund will be forfeited.

If however, an applicant withdraws their application prior to the on-site inspection, then a refund will be issued. An applicant that voluntarily withdraws its application prior to the issuance of a notice of noncompliance will not be issued a notice of noncompliance. Also, an applicant that voluntarily withdraws its application prior to the issuance of a notification of denial will not be issued a notice of certification denial.

#### Denial of certification

When CDA has reason to believe, based on a review of the information specified in §205.402 or §205.404 that an applicant for certification is not able to comply or is not in compliance with the requirements of this part, CDA will provide a written notification of noncompliance to the applicant. When correction of a noncompliance is not possible, CDA will combine the notification of noncompliance and a notification of denial of certification in one notification.

The notification of noncompliance that CDA issues will provide:

- (1) A description of each noncompliance;
- (2) The facts upon which the notification of noncompliance is based; and
- (3) The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

When CDA receives a response from the applicant to the Notice of Noncompliance, CDA will evaluate the applicant's corrective actions taken and supporting documentation submitted or the written rebuttal. If necessary an on-site inspection will be conducted.

When the corrective action or rebuttal is sufficient for the applicant to qualify for certification, CDA will issue the applicant an organic certificate with the required elements.

When the corrective action or rebuttal is not sufficient for the applicant to qualify for certification; CDA will issue the applicant a written notice of denial of certification. In addition, when an applicant fails to respond to the notification of noncompliance, CDA will issue a written notice of denial of certification. In all instances the CDA will provide notice of approval or denial to the Administrator.

Any notice of denial of certification issue by CDA will state the reason(s) for denial and the applicant's right to:

- (1) reapply for certification pursuant to §§205.401 and 205.405(e);
- (2) request mediation pursuant to §205.663; or
- (3) file an appeal of the denial of certification pursuant to §205.681.

When CDA receives a new application for certification, which includes a notification of noncompliance or a notice of denial of certification, CDA will treat the application as a new application and begin a new application process pursuant to §205.402.

If CDA has reason to believe that an applicant for certification has willfully made a false statement or otherwise purposefully misrepresented the applicant's operation or its compliance with the certification requirements pursuant to this part, the certifying agent may deny certification pursuant to paragraph (c)(1)(ii) of this section without first issuing a notification of noncompliance.

### Continuation of certification

All operations certified by CDA will be required to submit an annual update of the operation's Organic System Plan, according to the Organic System Plan Update Procedures. Following the receipt of the information required of an applicant for continuation of certification, CDA will within a reasonable time, review the information for completeness and sufficiency and conduct an on-site inspection of the certified operation: *except*, that, when it is impossible for CDA to conduct the annual on-site inspection, CDA will 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. However in this case, the annual on-site inspection will be conducted within the first 6 months following the certified operation's scheduled date of annual update.

If CDA 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 NOP rule, CDA will provide a written notification of noncompliance to the operation in accordance with §205.662.

If CDA 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).

### Compliance Procedures

Each notification of noncompliance, rejection of mediation, noncompliance resolution, proposed suspension or revocation, and suspension or revocation issued and each response to such notification will be sent to the recipient's place of business via a delivery service which provides dated returned receipts. CDA will use the electronic mailing service RPost for issuing Notices to all operations with valid email addresses. If there is no valid email address, the Notice shall be sent via US Postal Service, return receipt.

When documentation is received that the noncompliance has been received by the operation, a copy of the documentation shall be saved electronically in the operation's Company Specific Information in the shared organic folder on the CDA server.

When a certified operation demonstrates that each noncompliance has been resolved, CDA shall send the certified operation a written notification of noncompliance resolution. In addition, all notice of noncompliances and resolutions are provided to the NOP program.

### Combined Notice of Noncompliance and Notice of Proposed Suspension

CDA will issue a Combined Notice of Noncompliance and Notice of Proposed Suspension only in the case when an egregious, willful act has been committed and documented, or when correction of a noncompliance is not possible. In all cases of combined notices, the case information and all documentation will be reviewed by the Organic Program Manager in consultation with Colorado

Dept. of Agriculture Organic Program staff prior to issuing the combined notice. The Notice of Proposed Suspension may apply to the entire operation or a portion of the operation as applicable to the noncompliance.

The Combined Notice will outline the operation's right to request mediation or to file appeal as outlined in §205.663 and §205.681. CDA will attempt to reach a settlement agreement through the mediation process. If there is no response by the 30 day deadline, a Notice of Suspension will be issued.

#### Suspension or Revocation

When rebuttal of a noncompliance is unsuccessful or correction of noncompliance is not completed within the prescribed time period, CDA will send the certified operation a written notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the noncompliance. When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or revocation of certification may be combined in one notification. The notification of proposed suspension or revocation of certification will state:

- 1) the reason or reasons for the proposed suspension or revocation;
- 2) the proposed effective date of such suspension or revocation;
- 3) the impact of a suspension or revocation on future eligibility for certification; and
- 4) the right to request mediation or file an appeal.

CDA will not send a notification of suspension or revocation to a certified operation that has requested mediation or filed an appeal to the Secretary while final resolution of either is pending. The CDA will send a notification of suspension or revocation if there was no response to the proposed suspension or proposed revocation or if the response did not resolve the noncompliance found. The notification of suspension or revocation will state:

- 1) the effective date of the suspension or revocation;
- 2) the impact of the suspension or revocation;
- 3) the length of time of the suspension or revocation, if applicable; and
- 4) the right to request reinstatement.

#### Willful Violations

If CDA has reason to believe that a certified operation has willfully violated the Act or regulations, CDA shall send the certified operation a notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the non-compliance.

#### Mediation

CDA notifies each applicant that any dispute with respect to denial of certification or proposed suspension or revocation of certification may be mediated at the request of the applicant for certification or certified operation and with acceptance by CDA. The applicant is notified that mediation shall be requested in writing to CDA. If CDA rejects the request for mediation, CDA will provide written notification to the applicant for certification or certified operation. CDA will



provide written notification advising the applicant of the right to request an appeal within 30 days of the date of the written notification of rejection of the request for mediation. If mediation is accepted by CDA such mediation shall be conducted by a qualified mediator mutually agreed upon by the parties to the mediation. The parties to the mediation shall have no more than 30 days to reach an agreement following a mediation session. If mediation is unsuccessful, the applicant for certification or certified operation shall have 30 days from termination of mediation to appeal CDA's decision. Any agreement reached during or as a result of the mediation process shall be in compliance with the Act and the NOP rules. The Secretary may review any mediated agreement for conformity to the Act and the regulations and may reject any agreement or provisions not in compliance with the Act or regulations.

### Appeals

CDA notifies all persons subject to the Act that if they believe they are adversely affected by a non-compliant decision of CDA may appeal such decision to the Administrator.

### Eligibility for Reinstatement of Suspension

CDA notifies certified operations whose certification has been suspended may at any time, unless otherwise stated in the notification of suspension, submit a request to the Secretary for a reinstatement of its certification. The request must be accompanied by evidence demonstrating correction of each non-compliance and corrective actions taken to comply with and remain in compliance with the Act and the regulations.

In addition, CDA notifies the certified operation that a person responsibly connected with an operation whose certification has been revoked will be ineligible to receive certification for a period of five 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.

## **Public Statements Regarding Certification**

The CDA will refrain from making false or misleading claims about its accreditation status, the USDA accreditation program for certifying agents, or the nature or qualities of products labeled as organically produced.

## **International**

### Japan Export Arrangement

Plants (including fungi) and processed foods of plant origin may be exported to Japan under the USDA-Japan Equivalency Arrangement. The Colorado Department of Agriculture may issue a TM-1 export certificate to certified organic producers and handlers who request verification of organic export regulations and comply with all pertinent regulations. Only products with 95% or more organic product are eligible for export under this arrangement.

Products exported to Japan must carry the JAS seal, which may be affixed in one of two ways:

- US Exporters who have a contract with a JAS-certified importer may apply the JAS logo directly; OR

- US Exporters who do not have a contract with a JAS-certified importer may NOT apply the JAS seal; the product must be imported by a JAS-certified importer who must apply the logo prior to sale in Japan.

Alcohol products certified to the USDA National Organic Program and labeled with the word “Organic” in English may be exported without an export certificate. If the word “organic” is in the Japanese language, the product must be accompanied by an export certificate with the following information:

- Name of the certified alcoholic beverage
- Name and address of the distillery or brewery
- Certificate number and date
- Name and address of operator
- Country of origin
- Name and address of organic certifying agent

Please note that the TM-11 would meet these requirements.

#### Canada Equivalency Arrangement

Under an equivalency arrangement signed by the USDA and Canadian Food Inspection Agency (CFIA), raw agricultural products and processed products that are certified to the USDA National Organic Standards, are not required to obtain additional Canadian certification. Full implementation of the U.S. - Canada arrangement came into effect on July 1, 2011.

In addition to certification to the USDA organic regulations, products must meet the following requirements in order to be sold as organic in Canada:

- Crops must be produced without sodium nitrate.
- Crops must not be grown using hydroponic or aeroponic production methods.
- Agricultural products derived from animals must be produced according to Canadian livestock stocking rates.

The CDA will sign an Affidavit for compliance for operations that are certified organic by the CDA once the operation’s organic plan has been reviewed to verify that the above requirements have been met.

The statement “Certified in compliance with the terms of the US-Canada Organic Equivalency Arrangement” is on the affidavit. All operations upon receipt of the affidavit are notified that they can write this statement on a bill of lading, purchase organic or any other affirmative attestation.

#### EU Equivalency Arrangement

Under an equivalency arrangement signed by USDA and the European Union Commission agriculture products certified to the USDA National Organic Standards are not required to obtain additional certification to market the products as organic in the European. Full implementation of the US- EU Equivalency Arrangement came into effect on June 1, 2012.

In addition to certification to the USDA organic regulations, products must meet the following requirements in order to be sold as organic in the European Union:

- Products must have an EU import certificate that has been completed by a USDA-accredited certifying agent. CDA will complete electronic certificates of inspection in the EU TRACES system beginning no later than October 19, 2017.
- Products must be either produced within the US or have had final processing or packaging occur within the US.
- Organic wine and wine “made with organic grapes” may be exported to the EU only if the wine contains 100% organic grapes and organic ingredients (non-organic substances not listed under §205.605 are prohibited), AND the must have been produced using the winemaking practices and substances detailed in the EU organic regulations.

As all products traded under the partnership must be accompanied by an organic import certificate, the CDA will the review of organic systems plan as well as the most recent inspection report to determine compliance with the US-EU Arrangement.

#### Korean Equivalency Arrangement

Under an equivalency arrangement signed by the USDA and Korean Ministry of Agriculture, Food, and Rural Affairs (MAFRA), raw agricultural products and processed products that are certified to the USDA National Organic Standards, are not required to obtain additional Korean certification. Full implementation of the U.S. - Korea arrangement came into effect on July 1, 2014.

In addition to certification to the USDA organic regulations, products must meet the following requirements in order to be sold as organic in Korea:

- Are certified to the USDA or Korean organic regulations
- Are “processed products” as defined by the Korean Food Code
- Contain at least 95 percent organic ingredients
- Have their final processing (as defined in the Korean Food Code) occur in the U.S. or Korea

The CDA will complete the NAQS Import Certificate of Organic Processed Foods for CDA-certified operations demonstrating compliance with the above noted restrictions.

#### **Current Fee Schedule** (effective October 2015)

Three parts to the fee schedule exist:

##### 1. Base fee

The base fee is the base charge which is dependent upon the amount of applications the operation is submitting. The first application (base) is \$400.00. Additional categories are each an additional \$200.00.

##### 2. Category fee

The category fee is determined by the primary category, which is the part of the operation that produces the most income. This amount is determined by what tier the operation meets. There are three tiers for each category; \$400.00, \$850.00 or \$2100.00. This amount is in addition to the

base fee.

3. Inspection fee	
Hourly fee for inspection	\$34.00
Hourly fee for driving time	\$34.00
Mileage	\$ 0.25
Per diem	Based on State rate

### **Unannounced Organic Inspections** (effective September 2012) NOP 2609

1. The CDA will conduct unannounced inspections of 5 percent of the total certified operations per year. This is approximately one inspection per multiple inspector.
2. The unannounced inspections will include a broad spectrum of production types, products, and locations.
3. The CDA will not accept applications for certification from locations that the CDA are unable and unwilling to conduct unannounced inspections.
4. The operations chosen will be random, risk based or a result of a complaint. The CDA will disclose to the operation the reason that the operation was chosen for the announced inspection.
  - a. Criteria for conducting an unannounced inspection of an operation may include:
    - i. Previous noncompliance issues
    - ii. Complaints
    - iii. Organic and nonorganic production or handling, especially of visually indistinguishable varieties
    - iv. Risk of contamination from adjoining land use or commingling or contamination during handling
    - v. Complexity of operation
  - b. Unannounced inspections may be utilized to fulfill the requirements for an annual on-site monitoring inspections; this will only be accomplished if the inspector is able to conduct a full inspection of the operation.
5. The inspector will be directed to the portion of the operation to review during the unannounced inspection. This may be limited in scope, depth, breadth and may cover only certain aspects of the operation, such as parcels, facilities or products.
6. The inspector will complete the Unannounced Inspection Report. The report will be sent to the operation, reviewed by the CDA and the results communicated to the operation pursuant to 205.403(e), 205.404(a).
7. Inspectors may conduct samplings. If the visit to the operation is to be considered as both an instance of sample collection and an unannounced inspection, the inspector will conduct a full inspection of the operation.

8. If the operation is located more than 15 miles outside of the inspector's territory, the inspector will provide prior notification upon arrival, consisting of no more than four (4) hours. Also, if the inspector has already traveled to the area the operation is located in for other inspections, then the inspector will arrive at the operation without prior notification.
9. NOP Guidance Document 2609 Unannounced Inspections states in Sec. 4.1.11 that inspectors should not enter private property without permission and have adequate identification (business card and name tag). It also follows the state of Colorado trespassing laws involving state employees on private property.
10. The CDA written policy on unannounced inspections has been provided to certified operations and inspectors.



COLORADO DEPARTMENT OF AGRICULTURE

September 1, 2017  
(UPDATED November 3, 2017)

Ms. Cheri Courtney  
Accreditation and International Activities  
National Organic Program

RE: AIA17228GD.NC1  
Registered Email to: AIAInbox@ams.usda.gov

Dear Ms. Courtney:

On August 23, 2017 the Colorado Dept. of Agriculture withdrew the Combined Notice of Noncompliance and Notice of Proposed Suspension of Berry Patch Farms, LLC dated January 27, 2017 and sent Mr. Ferrell a letter stating such. Mr. Ferrell has also submitted information to resolve the noncompliance and Berry Patch Farms was issued a current organic certificate and is in good standing.

To prevent a reoccurrence of the noncompliance we have modified our management system in the following ways:

1. All CDA Organic Program staff involved in issuing Notices of Noncompliance and Notices of Suspension have been made aware that the Colorado Dept. of Agriculture Organic Program will no longer issue a Combined Notice of Noncompliance and Notice of Suspension as allowed by §205.662 (c) unless an egregious, willful act has been committed or in the case when correction of a noncompliance is not possible and CDA has supporting documentation. The case information will be reviewed in a meeting of CDA Organic Program staff to ensure it warrants this action before issuing the combined notice.



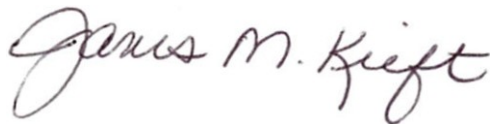
2. Our Organic Policy and Procedure Manual was updated to include this in a new section titled Combined Notice of Noncompliance and Notice of Suspension (page 18):

CDA will issue a Combined Notice of Noncompliance and Notice of Proposed Suspension only in the case when an egregious, willful act has been committed and documented or when correction of a noncompliance is not possible. In all cases of combined notices, the case information and all documentation will be reviewed by the Organic Program Manager in consultation with Colorado Dept. of Agriculture Organic Program staff prior to issuing the combined notice. The Notice of Proposed Suspension may apply to the entire operation or a portion of the operation as applicable to the noncompliance.

When a Combined Notice has been sent, CDA will notify the operator of their right to request mediation or to file an appeal as outlined in §205.663 and §205.681. CDA will attempt to reach a settlement agreement through the mediation process. If there is no response by the 30 day deadline, a Notice of Suspension will be issued.

3. The Noncompliance and Adverse Actions Flow Chart was downloaded and added to the Organic Policy and Procedures file.

Sincerely,



Janis M. Kieft  
Organic Program Manager

CC: Graham Davis

Attachments: Berry Patch Letter of Withdrawal  
CDA Organic Program Manual

