

# Montana Department of Agriculture Organic Certification Program

## Policy Manual

April 22, 2016



# Montana Department of Agriculture Organic Program Policy Manual

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**Welcome to the Montana Department of Agriculture Organic Program. We are an accredited certifying agent of the USDA National Organic Program. This manual is intended to provide information regarding the Organic certification process. It contains a description of the Montana Department of Agriculture Organic Program, policies, and rights and responsibilities of Montana Department of Agriculture certified clients.**

### **Mission Statement**

The Montana Department of Agriculture Certification Program is dedicated to providing professional certification services to Organic Operations in Montana and adjoining states. The program is committed to on-going evaluation and continuous improvement of its personnel, processes, and services to facilitate the growth and success of Organic agriculture.

### **Legal Authority**

Enabling legislation for a state organic certification program (the Program) in the Montana Department of Agriculture (MTDA) was passed by the Montana State Legislature in 1999. Administrative Rules of Montana: Organic Certification, Chapter 17, Sub-chapter 1, commonly known as the “Organic Certification Rule,” provides legal guidance for the management of the Organic Certification Program by the Department. The Administrative Rule and Law are available at the MTDA website at <http://agr.mt.gov>.

### **Organization**

The Organic Certification Program is part of the Commodity Services Bureau, which is administered by the Agricultural Sciences Division of the MTDA. The Division’s Laboratory Bureau provides residue analysis on an “as needed” basis. A third party **ISO/IEC 17025** accredited laboratory is used for USDA NOP Residue Testing, as required. Further information about MTDA can be obtained from the website at <http://agr.mt.gov>.

### **Services**

The organic certification program is a fee for service program, providing certification services under the USDA National Organic Program (7 CFR §205). Services are available to operations that produce field and row crops, livestock, and native and naturalized plant material harvested from uncultivated/wild lands. Certification services are also available to handlers, brokers, processors.

### **Contact Information**

The Montana Department of Agriculture  
Organic Certification Program  
PO Box 200201  
Helena, MT 59620-0201  
<http://agr.mt.gov>  
(406) 444-7804 (406) 444-9421  
[agrorganic@mt.gov](mailto:agrorganic@mt.gov)

The office is located at:  
Scott Hart Building  
302 North Roberts  
Room 69 (Lower Level)  
Helena, MT 59601

Office hours are from 7:00am to 4:30pm, Monday through Friday.

### **International Trade & Equivalency Arrangements**

To facilitate international marketing of Organic products, the program offers inspection services to verify compliance with terms of “Export Arrangements” and “Import Arrangements” between the USDA and foreign governments. This includes equivalency agreements and arrangements with European Union (EU), Canada, Japan, Taiwan, Korea and Switzerland.

### **Transaction Documentation Form**

Transaction documentation forms (TDFs) may be used in transactions of certified organic products to verify the organic status of products sold by a certified producer or handling operation.

Two types of transaction documentation forms are available:

- 1) Transaction documentation forms may be issued as sequentially numbered forms with the producer’s identification and expiration date beyond which use is not valid. Users shall enter shipment information that may include product name, production date, quantity sold, lot number (if applicable), sale price and date of sale.
- 2) The department issues completed documentation forms upon request and must contain all information requested including product name, production date, quantity sold, lot number (if applicable), sale price, date of sale and name and address of buyer.

### **Exported Products**

Producers and Handlers interested in accessing international markets can apply for additional certification to the organic standards or regulations of foreign countries. The Department also provides verification of compliance with specific (additional) requirements, for import of organic products, imposed by various countries.

### **Export Certificates**

The Department issues export certificates to certified organic operations that apply for inspection services that verify compliance with equivalency agreements and verification of organic export regulations, and comply with all pertinent department regulations.

### **CANADA EXPORTS – US/Canada Equivalency Arrangement**

Organic Products produced worldwide can be sold as organic in Canada (effective June 30, 2009.) To trade products under the partnership, certified operations must:

- Produce products without sodium nitrate or hydroponic/aeroponic methods.
- Produce livestock (except ruminants) according to specified stocking rates.

- Ship products with documentation that states, “Certified in compliance with the terms of the US-Canada Equivalency Arrangement.”

Labeling Requirements: For packaged retail products labels or stickers must state the name of the Accredited Certifier and may use the USDA organic seal and/or the Canada Organic Logo. All products must be in English and French. Wholesale products only require a lot number.

For more information visit: <https://www.ams.usda.gov/services/organic-certification/international-trade/Canada>.

### **EUROPEAN UNION Exports EU Equivalency Arrangement**

USDA organic products can be sold as organic in the EU (effective June 1, 2012.)

Products must be either produced or have had final processing or packaging occur within the US.

To export products under the partnerships, certified operations must:

- Apples and Pears must be produced without antibiotics.
- Wine may not contain non-organic grapes and must be produced using only winemaking practices and substances detailed in EU Organic regulations.
- Ship products with an EU import certificate, complete by a USDA-authorized certifier.

Labeling Requirements: For Packaged retail products, labels or stickers must state the name of the USDA authorized certifier and may use the USDA organic seal and/or the EU organic logo.

For more information visit: <https://www.ams.usda.gov/services/organic-certification/international-trade/European%20Union>

### **JAPAN EXPORTS – US Japan Equivalency Arrangement**

USDA organic plants, fungi and plant-based processed products (such as grape juice or corn meal) can be sold as organic in Japan (effective January 1, 2014.)

Products must be either produced or have had final processing or packaging occur within the US. To trade plants, fungi, and plant-based products under the partnership, certified operations must:

Ship products with an export certificate (TM-11), completed by an Accredited certifier and documentation that states, “Certification in compliance with the terms of the US Japan Organic Equivalency Arrangement.

Labeling Requirements: For packaged retail products, labels or stickers must state the name of the USDA-authorized certifier and may use the USDA organic seal. Use of the Japanese organic logo is required on plant and plant based products, and requires a Japanese Agricultural Standards (JAS)-authorized importer.

Other products: Organic products not regulated by the JAS law – such as meat, dairy products, and alcoholic beverages – may also be exported to Japan. These products do not require an export certificate and may be labeled with the USDA organic seal (but not the Japanese organic logo.)

For more information visit: <https://www.ams.usda.gov/services/organic-certification/international-trade/Japan>.

### **TAIWAN ARRANGEMENT**

USDA organic products produced and handled in the US can be sold as organic in Taiwan (effective March 18, 2009.)

To export products under the partnership, certified operations must:

Process products and crops using zero prohibited substances.

Produce livestock and meat products without systemic pain killers.

Ship imports with an export certificate (TM-11), completed by a USDA-authorized certifier.

Labeling Requirements: For packaged retail products, labels or stickers must state the name of the USDA – authorized certifier and may use the USDA organic seal.

For more information visit: <https://www.ams.usda.gov/services/organic-certification/international-trade/Taiwan>

### **KOREA EXPORTS –US/Korea Equivalence Arrangement**

USDA processed organic products certified in Korea or in the U.S may be sold as organic in either country (effective July 1, 2014).

Products certified to the USDA organic standards that:

Are “processed products” as they are defined by the Korean Food Code. Additional guidance is available at [www.ams.usda.gov/NOPTradeKorea](http://www.ams.usda.gov/NOPTradeKorea).

Contain at least 95 percent organic ingredients

Have their final processing (as defined in the Korean Food Code) occur in the United States

Don't contain apples and pears produced with the use of antibiotics.

All U.S. organic shipments exported to Korea under this arrangement must be accompanied by the NAQS Import Certificate of Organic Processed Foods.

Labeling requirements: Processed products certified as "organic" in the U.S. that meet the terms of the arrangement listed above may be sold as "organic" in Korea. These products must be labeled according to Korea's Ministry of Agriculture, Food and Rural Affairs (MAFRA) organic labeling requirements, and may display the Korean and/or USDA organic seal.

For more information visit: <https://www.ams.usda.gov/services/organic-certification/international-trade/Korea>

### **SWISS EXPORTS – US/Swiss Equivalency Arrangement**

Organic products must:

Be certified organic to U.S. Department of Agriculture (USDA), USDA organic regulations, at Title 7, Part 205 of the U.S. Code of Federal Regulations; and

Be either grown in the United States, produced in the United States, or be a product for which final processing or packaging has occurred in the United States; and

For any wine product, be produced and labeled according to the Switzerland Federal Department of Economic Affairs, Education and Research (EAER) Ordinances on Organic Farming and the Labeling of Organically Produced Products and Foodstuffs (910.18) and Organic Farming of 22 September 1997 (910.181) and its regulations ("Swiss Organic Ordinances" can be found at <http://bit.ly/FOAG-organic-farming>).

All U.S. organic shipments exported to Switzerland under this arrangement must be accompanied by a Swiss import certificate. Guidance and forms, including the Swiss import certificate, can be found at <http://bit.ly/FOAG-organic-farming>.

### **Labeling Requirements**

#### **Retail Products**

The USDA organic seal may be used on products traded under the arrangement in the U.S. as well as in Switzerland. In Switzerland, where no official organic logo exists, any organic seal or logo can be used as long as it meets all the labeling requirements applicable in Switzerland.

#### **Bulk Products**

Lot number must be present that allows for a complete audit trail to verify the product's identity.



## Wine

Under the arrangement, organic wine and wine “made with organic grapes” may be sold, labeled, and represented as “organic” in Switzerland if the wine:

Is produced from 100 percent certified organic grapes (all varieties) and that any other agricultural ingredients (including yeast) are certified organic.

Uses only those non-organic substances that are allowed under 7 CFR 205.605. However, wine containing 100 parts per million or less of sulfur dioxide may be sold as “organic” in Switzerland.

Is produced only using the winemaking practices and substances detailed in the Swiss Organic Ordinances found at <http://bit.ly/FOAG-organic-farming>.

Is labeled according to the Swiss Organic Ordinances (see link above).

For more information visit: <https://www.ams.usda.gov/services/organic-certification/international-trade/Switzerland>

## **Imports**

Imported organic products must either be certified to USDA organic regulations or to an [authorized international standard](#) under an established U.S. trade partnership.

## **CERTIFICATION REQUIREMENTS**

An operation seeking to receive or maintain Organic Certification must:

- Submit application materials, Organic System plan and annually renew certification.
- Continuously comply and manage operations in compliance with USDA-NOP and State Organic Certification Program rules.
- Submit any additional information requested for evaluation of products to be certified.
- Inform the MTDA about changes to the Operation, including changes to the management and production practices outlined on their most recent Organic System Plan.
- Cooperate with the Certification Processes and Program representatives, make arrangements for the inspection of their operation, and allow access to the operation and it's documentation of production, and sales records including noncertified production areas, records, and related infrastructure.

### **Application for Certification**

Applications can be found on our website: <http://agr.mt.gov>. Electronic forms are available online, or hard copies can be requested from the program office. All application fees are non-refundable upon receipt.

### **New Applicants**

**PRODUCERS** (Crops, Livestock or Wild Crop) should submit the following forms:

- Producer Application must be submitted approximately 120 days prior to harvest
- Organic System Plan(s) (OSP)
- Crop Summary and if applicable, Livestock Summary
- Land Application
- Previous Land Manager Affidavit (if applicable)

**HANDLERS** (handling processed products) should submit the following forms:

- Handler Application
- Handler Organic System Plan
- Product Profile (One per Product along with corresponding label(s))
- Product Profile Summary

New handler applications may be submitted at any time and are not subject to a late fee.

The completed application for Handlers or Producers may be mailed with payment to:

Montana Department of Agriculture  
Organic Certification Program  
P.O. Box 200201  
Helena, MT 59620-0201

### **Certification Fees**

The Department collects application, inspection, and a sales assessment fee from operations to fund the certification program. The program is required, by State Statute, to operate in a manner that does not impact the state budget.

Copies of the current fee schedules for Producers and Handlers can be found on the Department website <http://agr.mt.gov> or can be requested from the program office. The Producers fee schedule applies to crop, livestock, and wild crop operations. The Handlers fee schedule applies to all types of handlers including, but not limited to grain mills, distributors, seed cleaners, slaughter houses, coffee roasters, and retail operations.

### **USDA NOP Cost Share Program**

The USDA Farm Bill currently grants funds to the MTDA to reimburse certified operations with their certification costs. The program can reimburse 75% or up to \$750 in certification costs per scope (Crop, Livestock, Wild Crop, and Handling.) Applications are available on the MTDA website at <http://agr.mt.gov>. Funds are dispersed as first come first served basis. The application deadline is October 31.

Applications should include the following:

- Signed Cost Share Application
- Supporting Certification Cost Documentation
- W-9 for the operator/operation

### **Late Fees**

Non-payment of fees may result in late fees and after 3 months of non-payment a non-compliance is issued.

Late fee waiver requests should be addressed to the ASD Administrator. The ASD Administrator has final say in whether late fees are waived.

### **Transfer from another Certifier**

A producer or handler currently certified by another certifier may apply for MTDA organic certification. The previous certification would be surrendered.

MTDA accepts the certification decision made by another accredited certifying agent pursuant to NOP § 205.500. Information regarding an application can be found on the website at <http://agr.mt.gov>.

- The applicant is required to submit a complete application as a new applicant.
- A letter of good standing must be submitted to the Program from the previous accredited certifier.

Application fees are non-refundable. Inspection fees incurred are payable to MTDA regardless of the date if withdrawal or surrender occurs.

### **Renewal Applications for Continuing Certification**

After the first year of an operation's certification, a renewal application to continue certification must be submitted each subsequent year.

Renewal forms can be found on our website: <http://agr.mt.gov>. Electronic forms are available online or hard copies can be requested from the program office. All application fees are non-refundable.

Producers renewing certification should submit the following forms by March 15 annually:

- Producer Application
- Producer Sales Report (from previous year's organic sales)
- Organic System Plan Update Crop Summary and if applicable, Livestock Summary
- Crop Summary, and if applicable, Livestock Summary
- For additional land requested for certification: Land Application, Field Maps, and Previous Land Manager Affidavit, if applicable.

Handlers renewing certification should submit the following forms by September 15 annually:

- Handler Application
- Handler Sales Report
- Handler Organic System Plan Update
- Product Profile Summary Form
- Product Profiles and Labels (if changes were made, and/or if new products are handled.)

### **Expansion of Scope**

Certified Producers and Handlers that change the type of operation or the types of products marketed under an organic label may need to expand the certification scope of the operation. The organic system plan for the operation must be re-evaluated along with the list of certified products. In some cases the certificate itself must be amended.

### **Late Fees**

Renewal applications received after the designated due date will incur a \$200 late fee and subsequent late fees. Sales Report forms received after the due date will incur 18% late fee or \$25, whichever is greater.

### **Withdrawal**

An applicant may withdraw their request for certification at any time. An applicant that voluntarily withdraws an application prior to the issuance of a Notice of Non-Compliance will not be issued the Notice of Non-Compliance. An applicant that voluntarily withdraws and application prior to the issuance of a Notice of Denial of Certification will not be issued a Notice of Denial of Certification.

### **Surrender of Certification**

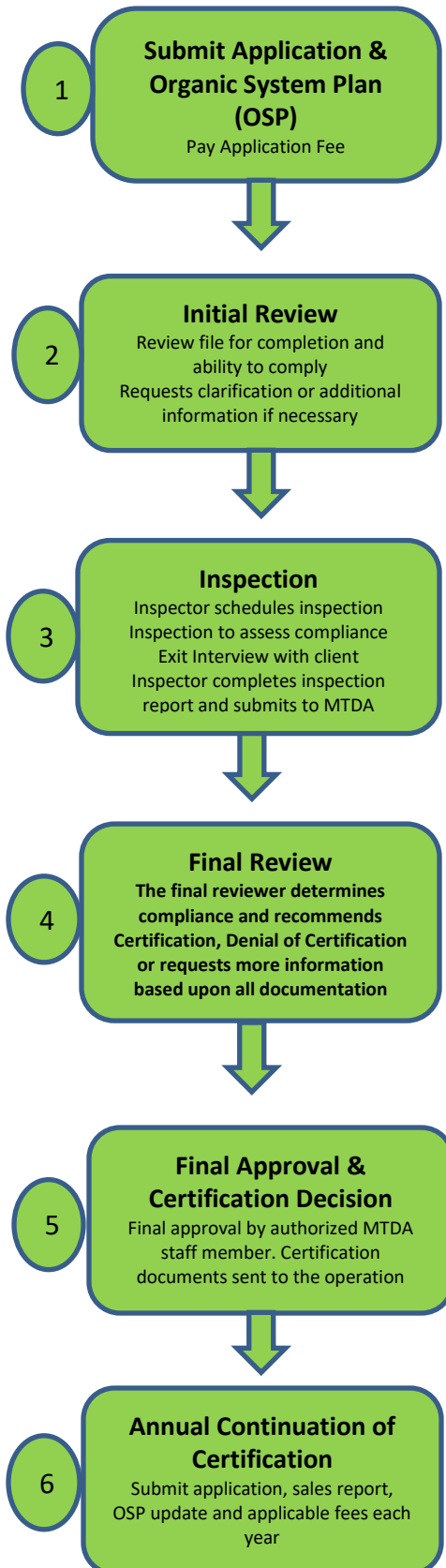
Surrender from the certification program can be facilitated by written or verbal notification at any time. An authorized representative of the operation must be the one requesting to surrender the operations certification. At the time of surrender of certification, all organic crops and processed products which are in the possession of the client lose the status as a certified organic product, by the date identified in the official surrender letter issued by MTDA.

### **New Scope and Changes**

Changes in an operation including adding new acreage, products, services or facilities, livestock groups or change of address of a current operation, the client must submit the relevant section of the OSP for review. Additions may require an onsite inspection; others may only require review of paperwork. Additions must be submitted to MTDA, reviewed and approved prior to any products grown or processed from the additions may be sold as organic. Contact the MTDA Organic Program office to discuss what paperwork is needed and if an inspection is required as soon as possible to ensure the additions are covered by certification.

Additions of new organic acreage or production facility, or a change of address for a current facility, require an onsite inspection. The OSP update must be received before the onsite inspection. Requests to add facilities or acreage at inspection may not be considered or may require additional inspection.

## The Certification Process



### **Initial Review**

Upon receipt of an application a file is established for the operation. Program staff verifies that the applicant has paid the correct fees, prepares a cost estimate for the certification process, and notifies the applicant of the estimate.

An Initial Review of the file is performed to ensure the application is complete, and production and handling practices described in the OSP comply with USDA-NOP standards. If MTDA needs clarification or additional information on any portion of the operation, staff contacts the applicant. The applicant is contacted by letter, via email or phone. All correspondence and contact with the applicant is recorded in the applicant's file.

After applicants pass Initial Review process, they are assigned to a field inspector. The inspector prepares a plan for inspection and drafts an Inspection Notification Letter, which notes information to be verified at inspection.

If the inspector finds that the Initial Review indicates a Non-Compliance that is not correctable, a Notice of Non-Compliance or a Notice of Non-Compliance and Denial of Certification is sent to the applicant.

### **Inspection**

After the Initial Review is complete, an on-site inspection is scheduled. The inspection verifies all land, production units, facilities, and any other site(s) that produce or handle Organic products that are part of the operation requesting certification.

### **Inspection Scheduling**

Each year an inspector contacts the applicant and arranges the date and time for the inspection. The inspector should coordinate with the operator to select the best time for inspection. The inspector schedules the inspection to minimize cost and provide timely service whenever possible.

### **Inspection Timing**

The inspector travels to the physical location of the operation where production and/or handling is taking place. The inspector conducts the inspection to assess the operation's compliance or capability to comply with the standards and applicable requirements and if applicable for export international equivalency agreements.

- The inspector conducts an opening meeting and an exit interview. At the exit interview they leave a Document of Inspection with the applicant that indicates Issues of Concern, Information Needed, or potential Noncompliances.
- The inspector completes the inspection report within approximately 14 days and submits it to MTDA for Final Review and Final Approval.

All on-site inspections must be conducted at a time when land, facilities, and activities that demonstrate the operation's compliance with applicable Organic standards can be observed (except during additional on-site inspections or unannounced inspections.) If necessary, the inspection may be delayed for up to six months to ensure the inspection is conducted at such a time. If the time between two regular inspections is more than twelve months, future inspections may be conducted in a shorter time frame to ensure that operations have one annual inspection per certification.

### **Inspection for Compliance**

Inspectors verify that the information included in the Organic System Plan accurately reflects the practices in use. Additionally, inspectors verify that prohibited substances have not been and are not being used. Applicants must grant inspectors complete access to the production and/or handling operation, including but not limited to all related documentation, records, facilities, and other documentation associated with non-organic production.

MTDA reserves the right to require additional information including the collection and testing of soil, water, waste, seeds, plant tissue, animal, and processed product samples. At the time of inspection, the inspector or MTDA field staff shall provide the operation's authorized representative with a receipt for any samples taken by the inspector. There is no charge to the inspector for the samples taken. MTDA may take photographs of an operation during on-site inspection and/or surveillance.

The inspector may verify Organic eligibility through inspection activities such as:

- Observing Crops, Livestock, Handling or Processing
- Interviewing Personal
- Observing Procedures
- Record Verification
- Data Analysis
- Observing and verifying material usage
- Confirming interview evidence

### **Additional/Unannounced Inspections**

The program conducts additional on-site inspections to determine compliance with the USDA - NOP regulations. The additional inspections may be announced or unannounced at the discretion of MTDA or as required by the USDA. Clients are charged for the unannounced inspection if it serves as the annual inspection, or a portion of the annual inspection. Clients may be charged for an unannounced inspection for the purpose of verifying corrective actions, observing a specific production stage, a history of noncompliance, or other reasons as deemed appropriate by MTDA. The certified operation must make access to records available for inspection and copying during normal business hours by an authorized representative and the certifying agent.

### **Client Participation at Inspection**

All annual on-site inspections must be conducted when an authorized representative of the operation who is knowledgeable about the inspected operation is present. Failure to complete an annual inspection is cause for Notice of Non-Compliance and/or Notice of Proposed Suspension.

MTDA operators must ensure that there is ample time for their inspection. The duration of an inspection varies by operation and from inspection to inspection. The inspector will need to view all documents that form the client's audit trail, and the client must have complete input, harvest, production and sales records for no less than the five years prior (or if certified for less than 5 years, all previous records pertaining to production and sales of organic products) available for inspection, including all receipts for inputs, contracted services, and equipment rental.



### **Exit Interview and Document of Inspection**

At the end of the inspection, the inspector conducts an exit interview with an authorized representative of the operation who is knowledgeable about the inspected operation. This will confirm the accuracy and completeness of inspection observations and information gathered during the on-site inspection. The inspector must also address the need for any additional information as well as any issues of concern or potential Non-Compliance. The inspector will inform the applicant that the Exit Interview is not the final certification decision and additional information or points of Non-Compliance may be issued later by MTDA during the final review and certification decision making process.

The Producer or Handler will receive a copy of the Document of Inspection form during the exit Interview. Document of Inspections are used to document potentially non-compliant issues, issues of concern, and information needed. A Producer or Handler's signature, acquired at the time of inspection, is evidence of legal entry onto private property and documentation of the exit interview. These are key requirements of the NOP and Montana statute.

### **Inspection Fees**

Billed at cost of service, plus 10% administrative fee. All fees for services are non-refundable.

### **Inspection Report**

Inspectors must submit an inspection report on the official MTDA Inspection Report Forms and other additional records as needed. Inspectors submit reports to the Program office for review by program staff to determine compliance. The inspection report must include an assessment of the applicant's adherence to the Organic System Plan, observations of the operations activities, condition of natural resources, and verification of any issues brought to the attention of the producer in the Inspection Notification Letter.

If the applicant responded to a Notice of Non-Compliance with corrective actions from the previous year, the inspector verifies applicant's corrective actions and documentation thereof, in regards to the previously identified noncompliance.

The report becomes a part of the operations certification file which includes supplemental information such as additional records, maps, photographs, sample forms, audit trail documentation, sample results, and input documentation.

### **Final Review**

**When the program office receives the Inspection Report(s) from the inspector in approximately 14 business days**, the file is assigned to a final reviewer. The final review is based on information in the inspection report, Document of Inspection (DOI), and any other supplemental information provided by the applicant.

The Final Reviewer evaluates the operation's compliance with Organic standards by reviewing the inspection report, the attachments to the report, the DOI, and previously submitted documentation in the file. The reviewer specifically notes and explains all issues of concern on the Certification Decision Checklist.

If the reviewer's analysis indicates that the operation is in compliance with certification requirements, the reviewer drafts and recommends an issuance of a Notice of Certification and Certificate of Organic Operation.

If the reviewer concludes that information is needed prior to making a certification decision, the reviewer will draft a Notice of Information Needed letter.

If the reviewer concludes that the applicant may not be in compliance with one or more certification standards, then the reviewer determines the severity of the potential non-compliance.

- If it is determined that compliance is possible, the reviewer drafts and recommends a Notice of Certification and Certificate of Organic Operation.
- If more information is needed a letter of need will be sent to the operation.
- If compliance is not possible, the reviewer sends the applicant a combined Notice of Noncompliance and Notice of Denial of Certification or the renewing operation an Adverse Action.

### **Final Approval**

The final review, recommendation, and draft letters are submitted to the office for final approval by an authorized staff member. Once the decision has been made, a staff member prepares the Certification Documents and sends them to the operation.

### **Certification Decision**

If certification has been granted, the operation receives:

- Notice of Certification
- Organic Certificate
- Copy of the inspection report(s)

- Notice of information needed (if applicable)
- Notice of (minor) Non-Compliance (if applicable)
- Copy of any results of analytical testing (if applicable)

If certification is not granted, the applicant receives:

- Notice of information needed
- Notice of Non-Compliance
- Notice of Denial of Certification for Applicant or Adverse Action for renewing operation
- Copy of any results of analytical testing (if applicable)
- Copy of the inspection report(s)

In all cases the Program retains authority for granting, maintaining, suspending, or withdrawing certification; the Department does not delegate decision-making authority to any outside person or outside organization.

**Annual Continuation of Certification**

Submit application, sales report, OSP update and applicable fees each year.

## **ADVERSE ACTIONS**

### **Noncompliance Procedures and Noncompliance Notification**

When an inspection, review, or investigation of a certified operation by the Program reveals any non-compliance with the Act or regulations or with any standards or regulations related to additional certifications, a written notification of non-compliance shall be sent to the certified operation. Such notification shall provide:

- A description of each non-compliance;
- Citation of the specific standard with which the operation is non-compliant;
- The facts upon which the notification of non-compliance is based; and
- The date by which the certified operation must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

### **Resolution**

When a certified operation demonstrates that noncompliance has been resolved, a written notification of non-compliance resolution is sent.

### **Proposed Suspension or Revocation**

When rebuttal is unsuccessful, or correction of the non-compliance is not completed within the prescribed time period (30 days from issuance of Notice of Non-Compliance), a written notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the non-compliance, shall be sent.

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:

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

### **Suspension or Revocation**

If the certified operation fails to correct the non-compliance to resolve the issue through rebuttal or mediation, or to file an appeal of the proposed suspension of certification, the operation is sent a written notification of revocation.

The Program must not send a notification of suspension or revocation to a certified operation that has requested mediation or filed appeal, while final resolution of either is pending.

### **Request for Reinstatement**

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

If the operation submits the reinstatement request to the certifier, the certifier will send the request to the NOP along with evidence from the certification process. When forwarding a request for reinstatement, the certifier's cover letter to the NOP must state whether the onsite inspection and review showed that the operation had corrected all previously cited non-compliances and was otherwise in full compliance with the regulations. If the operation's reinstatement request includes documented evidence of full compliance, then the NOP will approve reinstatement. If not, then the NOP will deny the reinstatement request and the suspension will remain in effect.

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

Agricultural products that are produced and/or handled during the time between suspension and reinstatement may not be sold, labeled or represented as "100% organic", "organic", or "made with organic (specified ingredients or food groups(s))."

A certified operation or a responsible person connected with an operation whose NOP certification has been revoked will be ineligible to receive certification for a period of 5 years following the date of such revocation. Except, that the Secretary may when in the best interest of the certification program, reduce or eliminate the period of ineligibility for certification to the NOP. Similarly, the Director of the Department may, when in the best interest of the program, reduce or eliminate the period of ineligibility for additional certification(s).

### **Notifying the NOP of the Outcome of the Inspection Process**

Federal regulations require the MTDA to send Notices of Non-Compliance and Notices of Denial of Certification to the USDA National Organic Program (NOP). The inspector is also informed of

the outcome of the decision-making process, including information on requirements for the correction of minor non-compliance.

### **Accepting Decisions Made by Foreign Certifying Agents**

In lieu of accreditation by the USDA, the MTDA accepts a foreign certifying agent's accreditation to certify organic production or handling operations if:

- The USDA determines that the standards under which the foreign government authority accredited the foreign certifying agent meet the requirements of this part; or
- The foreign government authority that accredited the foreign certifying agent acted under an equivalency agreement negotiated between the United States and the foreign government.

### **Rights of Certified Operators**

The program does not exclude from participation in, or deny NOP certification 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.

The program accepts applications from production and handling operations that fall within its scope(s) of accreditation and certifies all qualified applicants to the extent of its administrative capacity. Access shall not be conditional upon the size of the operation or membership in any association or group. Nor shall certification be conditional upon the number of certificates already issued.

A fee estimate will be provided to new and renewing operations.

### **Responsibilities of Certified Operators**

Certified operators must continuously manage their operations in compliance with USDA NOP and Montana Department of Agriculture standards and policies.

A person seeking to receive or maintain organic certification from the Department must comply with **MCA 80-11-601, ARM 4.17, and 7 CFR §205**. The operation must also adhere to formal policy, guidelines, and instruction, as applicable to their organic production practices. A person seeking to receive or maintain additional certifications to standards other than the NOP must comply with all standards and regulations applicable to the additional certification.

Operators are required to report changes to their Organic System Plan that affect the conformity of the practices or products with certification standards, including:

- Application of pest control products not found on the national list to control pest problems in handling facilities, due to uncontrollable infestation, or to be in compliance with Federal, State, or Local laws and regulations.
- Intentional or unintentional application of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation including accidental spray drift and;
- Change(s) in a certified operation or any portion of a certified operation that may affect its compliance with the Act and the regulations in this part, such as the intentional or unintentional commingling of certified and non-certified crops, livestock, or product, thereby losing auditable organic integrity of the products.

An Operator seeking to receive or maintain organic certification from the program must establish, implement, and update annually an organic production or handling system plan as provided for in 7 CFR § 205.200.

Applicable records must be maintained at the organic operation for not less than 5 years from their date of creation and allow access to such records during normal business hours for review and copying to determine compliance with the Organic Food Production Act, and the USDA-NOP regulations , as stated in § 205.104.

An Operator seeking to receive or maintain organic certification must submit the applicable fees.

An Operator must correctly use the Department Program seal and the USDA seal as laid out in state law and NOP regulations.

### **Responsibilities of the Certification Agent**

Demonstrate the ability to fully comply with the requirements for accreditation by documenting, implementing, and maintaining a system that addresses all elements outlined in 7 CFR § 205.500: Accreditation of Certifying Agents. This includes, but is not limited to:

- Trained and knowledgeable contractors and employees for inspections and reviews.
- Evaluation of contractors and employees on an annual basis.
- Evaluation of Program procedures, policies, and record keeping. Mitigate potential Conflicts of Interest by requiring all contractors, employees, and Advisory Committee Members to disclose all business and familial relationships between themselves and certified entities. Inspectors must not have a conflict of interest in the operations they inspect. This means that inspectors must not accept payments, gifts, or favors of any kind from any business inspected.

Maintain strict confidentiality with respect to NOP certified clients. The Program does not disclose to third parties (with the exception of the Secretary or applicable program governing State official or their authorized representatives) any business-related information concerning any client obtained while implementing the regulations in this part. This policy applies to all information related to certification applicants and clients except for the types of information listed below [as required by 205.503], which are made available to any member of the public upon request.

As a condition of employment, employees and contractors agree to safeguard confidential information, to use it only for Program business, and to refrain from disclosing it to others.

**Conflicts of Interest are prevented by:**

- 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 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;
- 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;
- Not giving advice or providing consultancy services to certification applicants or certified operations, for overcoming identified barriers to certification; and
- Ensuring that the decision to certify an operation is made by a person different from those who conducted the on-site inspection and review of the inspection report.

The following information is available to any member of the public upon request:

- Certificates of Organic Operation issued during the current and three preceding calendar years;
- A list of certified producers and handlers including name of the operation, type(s) of operation, products produced, and the effective date of the certification, during the current the current and three preceding calendar years;
- The results of laboratory analyses for residue of pesticides and other prohibited substances conducted during the current and three preceding calendar years; and
- Other business information as permitted in writing by the producer or handler.



If a request for information involves confidential information about a certified party, the Program requires written permission from the certified party before releasing the information. Where the law requires information to be disclosed to a third party, the Program will inform the affected operation of the release of confidential information.

The program maintains the following records [as required by 205.510(b)] and makes 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:

- Records obtained from applicants for certification and certified operations are maintained for not less than 10 years beyond their receipt;
- Records created by the Program regarding applicants for certification and certified operations are maintained for not less than 10 years beyond their creations; and
- Records created or received by the Program pursuant to the accreditation requirements of this subpart F, excluding any records covered by 205.510(b)(2), are maintained for not less than 10 years beyond their creation of receipt.

The program's files are fully accessible to the Program's accreditors. The Program is not obligated to inform a client of an accretor's review of confidential information related to the client's application, inspection, evaluation, or certification.

## **Temporary Variance**

A temporary variance may be submitted from the USDA organic regulations.

- **Certified Operations**
- A certified operation submitting a request for a temporary variance to their certifier or SOP must:
  - a. Submit the request in writing, and include supporting documentation justifying the need for the temporary variance; and
  - b. Maintain records on any procedures or practices impacted by the temporary variance, if it were granted.

The administrator may establish a temporary variance from the requirements in §§ 205.203 – 205.207, 205.236 - 205.240, and 205.270 – 205.272 of the regulations for the following reasons:

- a. Natural disasters declared by the Secretary;
- b. Damage caused by drought, wind, flood, excessive moisture, hail, tornado, earthquake, fire or other business interruption; and
- c. Practices used for the purpose of conducting research or trials of techniques, varieties, or ingredients used in organic production or handling.

A temporary variance may not be granted for:

- a. Any practice, material or procedure prohibited under § 205.105;
- b. Feeding non-organic feed to organic livestock; or
- c. Any USDA organic regulation not included in §§ 205.203 – 205.207, 205.236 – 205.240, or 205.270 – 205.272.

Temporary variances shall be granted for a specific period of time, subject to extension as the Administrator deems necessary.

## **Residue Testing and Unannounced Inspections**

Random yearly residue testing and unannounced inspections of 5 % of all client operators are conducted as per the Organic Foods Production Act and USDA NOP 205.403(a)(2)(i),(ii),(iii) and NOP 2609. **Agriculture Sciences Division field staff collects the samples and submits them for testing to an ISO/IEC 17025:2005 accredited lab.** Random sampling may also occur as inspectors or field staff deem necessary.

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

When testing detects prohibited substances at levels that are greater than 5 percent of the EPA tolerance for the specific pesticide detected, or if unavoidable contamination from environmental factors occurs, or if application of a prohibited material is required by Federal, State, or local laws and regulations, the product cannot be sold, labeled, or represented as organically produced. In such instances, organic market claims must be voluntarily removed by the certified entity, or the Department may issue a "Stop Sale" as per ARM 4.17.114 (2), and civil penalties may be assessed.

The Administrator, the applicable State organic program's governing State official, of the Program may conduct an investigation of the certified operation to determine the cause of the prohibited substance.

### **Compliance Issues**

The program may investigate complaints of non-compliance with the Act or regulations concerning production and handling operations that are certified by the Program.

The Program manager must be notified of all compliance proceedings and actions taken pursuant to this part.

A State organic program's governing State official may investigate complaints of non-compliance with the Act or regulations in this part concerning organic production or handling operations operating in the State.

### **Willful Violations**

If there is reason to believe that a certified operation has willfully violated the Act or regulations in this part, or provisions of standards or regulations related to additional certification(s), the Program 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.

In addition to suspension or revocation, any certified operation that:

- Knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than the amount specified in 3.91(b)(i)(xxxvii) of title 7 CFR, per violation.
- Makes a false statement under the Act to the Secretary, a State organic program's governing State official, or a certifying agent shall be subject to the provisions of section 1001 of title 18, United States Code.
- May be subject to a civil penalty according to the Montana Act and ARM regulations.

### **Notifying the NOP of Non-Compliances**

Simultaneously with its issuance, the Program submits to the NOP Administrator a copy of any notice of:

- Notification of non-compliance,
- Notification of resolution of non-compliance,
- Denial of Certification issues pursuant to 205.405
- Notification of proposed suspension or revocation, and
- Notification of suspension or revocation certification pursuant to 205.662.

## **Mediation**

Any dispute with respect to denial of certification, proposed suspension, or revocation of certification under this part may be mediated at the request of the applicant or certified operation and acceptance by the program. Mediation must be requested in writing to the Program.

If the Program rejects the request for mediation, it shall provide written notification to the applicant or certified operation. The written notification shall advise the applicant or certified operation of the right to request an appeal, pursuant to 7 CFR § 205.663, within 30 days of the date of the written notification of rejection of the request for mediation.

If mediation is accepted by the Program, such mediation shall be conducted by a qualified mediator mutually agreed upon by the parties to the mediation or by the program.

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 the Program's decision pursuant to 7 CFR § 205.663.

Any agreement reached during or as a result of the mediation process shall be in compliance with the Act and regulations. The Secretary may review any mediated agreement for conformity to the Act and regulations and may reject any agreement or provision not in conformance with the Act or these regulations.

## **Appeal of Certification Decisions**

An applicant for certification may appeal the notice of denial of certification, under the NOP standard, and a certified operation may appeal the notification of proposed suspension or revocation of certification, to the Administrator.

- If the Administrator (or director) sustains a certification applicant's or certified operation's appeal of the program decision, the applicant will be issued organic certification or a certified operation will continue its certification, as applicable to the operation. The act of sustaining the appeal shall not be an adverse action subject to appeal by the Program.
- If the Administrator denies an appeal, a formal administrative proceeding will be initiated to deny, suspend, or revoke the certification. Such proceeding shall be conducted pursuant to the USDA Uniform Rules of Practice.

An appeal of a noncompliance decision must be filed within the time period provided in the letter of notification or within 30 days from receipt of the notification, whichever occurs later. The appeal will be considered "filed" on the date received by the Administrator. Decisions to deny, suspend, or revoke certification or accreditation will become final and non-appealable unless the decision is appealed in a timely manner.

Appeals to the Administrator must be filed in writing.

All appeals must include a copy of the adverse decision and a statement of the appellant's reasons for believing that the decision was not proper or made in accordance with applicable program regulations, policies, or procedures.

### **Complaints**

Complaints against the program may be lodged under State of Montana Policy #6201-98-001 Rules of Conduct Disclosure and Department Policy. Under this policy, complaints may address incidents in which employees of the department have:

- Used public office for private gain;
- Given preferential treatment to any person;
- Impeded government efficiency or economy;
- Lost complete independence or impartiality;
- Made a department decision outside of official channels, or
- Otherwise adversely affected the public confidence or the integrity of the Department.

### **Complaints Against Operators**

Any Person with knowledge of a violation that an organic product contains residues of prohibited substances or was produced with excluded methods may file a complaint with the Program. Complaints should be in writing, signed, and should provide the details know to the person filing the complaint. However, the lack of written or signed complaint will not preclude the Department from investigating.

The Program will evaluate each complaint and will investigate complaints involving operators certified by the Program. Complaints involving operations not certified by the Program will be referred to the Administrator of the NOP.

The Department may investigate certified or non-certified organic operations, whether certified by the Department or not, upon determining that a need exists to protect public health and safety or preserve evidence that would justify an immediate investigation.

**DEFINITIONS AND TERMINOLOGY** (Definitions refer to NOP regulations: 7CFR Part 205.2 Terms defined as applicable.)

**Agricultural Product** - Any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock that is marketed for human consumption.

**Certification or Certified** - A determination made by a certifying agent that a production or handling operation is in compliance with the Act and the regulations in this part, which is documented by a certificate of organic operation.

**Certificate** - A document evidencing that an operation has been certified to the specified standard and listing the certified commodities or products.

**Claims** - Oral, written, implied, or symbolic representations, statements, or advertising or other forms of communication presented to the public or buyers of agricultural products that relate to the organic certification process or the term, "100 percent organic", "organic", or "made with organic (specified ingredients or food group)," or in the case of agricultural products containing less than 70 percent organic ingredients, the term "organic" on the ingredient panel.

**Crop Rotation** - The practice of alternating the annual crops grown on a specific field in a planned pattern or sequence in successive crop years so that crops of the same species or family are not grown repeatedly without interruption on the same field. Perennial cropping systems employ means such as alley cropping, intercropping, and hedgerows to introduce biological diversity in lieu of crop rotation.

**Handler** - Any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products.

**Handling Operation** - Any operation or portion of an operation (except final retailers of agricultural products that do not process agricultural products) that receives or otherwise acquires agricultural products and processes, packages, or stores such products.

**Label** - A display of written, printed, or graphic material on the immediate container of an agricultural product, or any such material affixed to any agricultural product, or affixed to a bulk

container containing an agricultural product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

**Organic System Plan (OSP)** - A plan of management of an organic production or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in the Act and the regulations in subpart C of this part.

**Processing** - Cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, slaughtering, cutting fermenting, distilling, eviscerating, preserving, dehydrating, freezing, chilling, or otherwise manufacturing and includes the packaging, canning, jarring, or otherwise enclosing food in a container.

**Producer** - A person who engages in the business of growing or producing food, fiber, feed, and other agricultural-based consumer products.

**Records** - Any information in written, visual, or electronic form that documents the activities undertaken by a producer, handler, or certifying agent to comply with the Act and regulations in this part.

**Responsibly Connected** - Any person who is a partner, officer, director, holder, manager, or owner of 10 percent or more of the voting stock of an applicant or a recipient of certification or accreditation.

**Retail food establishment** - A restaurant; delicatessen; bakery; grocery store; or any retail outlet with an in-store restaurant, delicatessen, bakery, salad bar, or other eat-in carry-out service of processed or prepared raw and ready-to-eat-food.

**Split Operation** - An operation that produces or handles both organic and nonorganic agricultural products.

**State certifying agent** - A certifying agent accredited by the Secretary under the National Organic Program and operated by the State for the purposes of certifying organic production and handling operations in the State.

**Wild Crop** - Any plant or portion of a plant that is collected or harvested from a site that is not maintained under cultivation or other agriculture management.