

SUBCHAPTER 15. ORGANIC PRODUCTS

35:37-15-1. Definitions of the Oklahoma Department of Agriculture, Food, & Forestry Organic Program

The following words or terms, when used in this subchapter, shall have the following meaning, unless the context indicates otherwise:

"Certifying agent registration" means the mandatory act of filing with the Department, on forms provided by or approved by the Department, the name and address of any accredited certifying agent that certifies organic entities within the state of Oklahoma.

"Crop" means a plant or part of a plant intended to be marketed as an agricultural product or fed to livestock.

"Handler" or **"Processor"** means any person who processes, packages, or resells organic food products or non-organic food products.

"Livestock" means cattle, swine, sheep, goats, poultry, ratites, domestic cervidae, and bison.

"NOP" means the National Organic Program, as outlined in *Federal Register* Vol. 65, No. 246 NOP 7 CFR, Part 205.

"Organic entity" refers to any producer or handler, and the production or handling site and/or facility, that utilizes methods that adhere to those required by NOP 7 CFR, Part 205.

"Organic Certification Seal" means the design approved by the Department and which when imprinted or affixed on labels, packages, or products, or used in advertising in any manner, shall signify that the standards and rules developed in accordance with provisions of Chapter 1, Article 5, Title 2, Oklahoma Department of Agriculture, Food, & Forestry Organic Program Codes, and all other conditions and provisions of that chapter have been met.

"Producer" means any person or organization that grows, raises, or produces a food or non-food product and offers the product for sale as an organic product, or sells the product as an organic product.

35:37-15-2. The Adoption of NOP Standards

The Department adopts or incorporates by reference the following parts of the official rules and regulations of the NOP, as outlined in *Federal Register* Vol. 65, No. 246 NOP 7 CFR Part 205; except for OAC 35:37-15-1, or as the Department designates otherwise in specific cases:

- (1) Subpart A - Definitions, all section; except for those designated otherwise by this subchapter;
- (2) Subpart B - Applicability, all sections;
- (3) Subpart C - Organic Production and Handling Requirements, all sections;
- (4) Subpart D - Labels, Labeling, and Market Information, all sections;
- (5) Subpart E - Certification, all sections;
- (6) Subpart F - General Requirements for Accreditation, all sections; and
- (7) Subpart G - Administrative.
 - (A) Sections 205.600 through 205.607
 - (B) Sections 205.660 through 205.663
 - (C) Sections 205.670 through 205.672
 - (D) Sections 205.680 through 205.681

35:37-15-3. Procedures for Organic Certification and Registration

(a) The application for organic certification of producers and handlers, as defined by the NOP 7 CFR, Part 205, shall be submitted to the Department on an approved application form available from the Department, or in a manner prescribed by the Department. Applications shall only be received from Oklahoma-based organic entities.

(b) Initial application for certification shall be accompanied by the certification fee and completed information in compliance with NOP 7 CFR 205.401. The initial application shall be received by the

Department not less than thirty (30) days before harvest of crop or before final handling of the organic product.

(c) Once granted, certification continues in effect for one (1) year or until surrendered by the certified entity, or suspension or revocation by the Department. An annual renewal application for certification must be submitted to the Department with a certification fee and information as required by NOP 7 CFR 205.406; and an annual reinspection shall be conducted by the Department at each facility to determine whether the certification of the operation should continue.

(d) A certification fee shall accompany each application or renewal application for organic certification. Total certification fees shall be assessed at the rate of:

(1) Crop producers:

(A) Producers with 25 acres or less - \$200.00

(B) Producers with 26 to 250 acres - \$250.00

(C) Producers with 251 to 500 acres - \$350.00

(D) Producers with more than 500 acres - \$500.00

(2) Livestock Producers:

(A) Producers with 100 head or less - \$200.00

(B) Producers with 101 to 300 head - \$300.00

(C) Producers with 301 to 500 head - \$400.00

(D) Producers with more than 501 head - \$500.00

(3) Handlers:

(A) On-farm processing of any kind - \$200.00

(B) Commercial Food Processors of any kind - \$500.00

(C) Commercial Feed Processors of any kind - \$500.00

(D) Commercial products/services other than food or feed - \$500.00

(4) Fee for each certified organic product label submitted by any processor - \$5.00 per label.

(e) Exempt producers, processors and handlers must submit a \$50.00 registration fee with their attestation form annually.

(f) All fees include an application packet, on-site inspection, transaction certificates and sampling if applicable. Travel expenses will be added for out-of-state certifications.

(g) A refund of seventy-five percent (75%) will be made if certification is denied by the Department and the request is made prior to the on-site inspection.

(h) The initial certification fee is not prorated throughout the year.

(i) All certification fees shall be due and payable before organic inspections will be conducted.

(j) Applications to renew certification are due one (1) year from the date of the previous application. Any application postmarked fifteen (15) days after due date shall pay an additional late fee of one hundred dollars (\$ 100) to continue certification by the Department.

(k) Certified organic entities may petition to withdraw their certification with the Department at any time. In order to withdraw certification, the applicant must submit the request in writing, with company name, address, and signature. A voluntary withdrawal of the certification application by the organic entity shall not result in a "Notice of Certification Denial."

(l) Any certified entity that withdraws their certification from the Department or allows their certification to elapse may reapply for recertification, but will be considered to be a renewal application and shall pay the renewal certification fee.

(m) "Exempt" or "excluded" organic producers or handlers, as defined by the NOP 7 CFR 205.101, must register with the Department prior to the offering for sale of any organic product. Exempt or excluded organic producers must be registered with the Department as an exempt or excluded organic entity and may apply to be certified "organic" by the Department.

35:37-15-4. Records to be Maintained for Certification

(a) Certified organic entities shall maintain records applicable to the organic operation for not less than five (5) years and shall make the records available to the Department as required by the NOP, 7 CFR 205.103.

- (1) All certified organic producers shall keep records for each commodity produced; including, but not limited to:
 - (A) Physical address of each production site where crops were grown;
 - (B) Crop and site history for the previous three (3) years of production;
 - (C) Names of crops, with varieties, produced;
 - (D) Input materials applied to plants, soil, water, and products. These records shall include date applied, application rate, and name of material, including brand name where possible;
 - (E) Handling and processing description, date, and location. Location shall include the name and address of the handler or processor;
 - (F) Records of volume of all sales including: on-farm, wholesale, and retail; name and address of purchaser where possible; and transaction certificate when used;
 - (G) Audit tracking system for each product identified, with lot numbers or other identifiers that facilitate tracking of products from seed or seedling to sale or release of physical control. Storage identification and bin location, and identifiable number if applicable, must be included.
- (2) Certified organic livestock producers shall keep records; including, but not limited to:
 - (A) Receipts for stock and materials;
 - (B) Birth or purchase of livestock through sale or slaughter;
 - (C) All disease and pest management materials administered including dates administered, material identification, dosages, and sources;
 - (D) All purchased feeds including dates purchased, feed identification, quantities purchased, sources, and a copy of the organic certification;
 - (E) Weight of slaughter animals at slaughter and weight of post-slaughter animal products;
 - (F) Sales records of all organic animal products sold including dates, quantities, and weights. Sales records shall include the purchaser's name and address where possible and transaction certificate number when used;
 - (G) If livestock graze any fields or consume any production crops, certification records of those fields or crops.
- (3) Certified organic handlers shall maintain records that track ingredients and certified organic products from receiving through distribution, shipping, or sale; including, but not limited to:
 - (A) An organic handler system plan;
 - (B) Maps of production facility structures and handling areas;
 - (C) Production flow charts, with organic control points highlighted;
 - (D) Assigned production lot numbers;
 - (E) Formulation for each product;
 - (F) Product audit tracking records, that may include; but are not limited to:
 - (i) Invoices;
 - (ii) Bills of lading, and producer certificates for incoming products;
 - (iii) Date and quantity of product processed or handled;
 - (iv) Repack data and production run reports;
 - (v) Invoices and bills of lading of products shipped out.
 - (b) Handlers shall have available copies of organic certificates for all organic ingredients and products. Organic certificates shall be current, correspond to the organic ingredients used in processing, and be from accredited certifying agents.

35:37-15-5. Inspections and Sampling for Certification

- (a) An initial on-site inspection shall be conducted for each production unit, facility, and site that produces or handles organic products, as required by the NOP, 7 CFR 205.403. The inspector shall conduct an exit interview with the organic entity's authorized representative at the end of the inspection to verify the accuracy of the inspection. A copy of the inspection report shall be provided to the applicant within a reasonable time following the inspection.
- (b) The Department shall conduct additional inspections to determine compliance to the NOP and Department rules of an applicant or organic entity certified by the Department when requested by the United States Department of Agriculture (USDA)-NOP administrator or by the Department.

- (c) Additional inspections may be conducted without notification at the discretion of the Department.
- (d) The Department, or any inspection designee of the Department, may collect samples of soil, products, or agricultural inputs from randomly or systematically selected organic entities certified by the Department as part of the routine annual organic inspection. The Department shall collect samples of soil, products, or agricultural inputs when there is reason to believe that land, an input, or product came into contact with a prohibited substance or that excluded methods were used.
- (e) Applicants shall be provided with a receipt for any samples collected by the Department, or by the designated inspector. The collected samples shall be analyzed by any qualified laboratory at the expense of the Department.
- (f) Results of the individual inspections, sampling, and test analyses shall be provided to the NOP administrator and the certified organic entity or applicant.

35:37-15-6. Compliance Enforcement

- (a) When it has been determined that an organic entity certified by the Department is knowingly selling, representing, or labeling as organic any products that have been exposed to or contain prohibited substances, or that have been produced using prohibited substances or excluded methods, the Department shall send the certified organic entity a written notification of suspension of rights to sell the product as organic.
- (b) The product is prohibited from further sale or movement, in accordance with the NOP, 7 CFR 205.6462(d). The Department shall remove the suspension of rights to sell when the organic entity becomes compliant to the requirements of the NOP 7 CFR, Part 205.
- (c) The Department may initiate a compliance action against an applicant for certification or an organic entity certified by the Department that is not in compliance with NOP 7 CFR, Part 205.

35:37-15-7. Certificates Issued as a Result of Certification with the ODAFF Organic Program

- (a) The Department shall issue a "Certificate of Organic Operation" to all organic entities that are certified by the Department, with information as required by 7 CFR 205.404.
- (b) The certificate shall continue in effect for one (1) year or until surrendered by the certified organic entity, or revocation or suspension by the Department or by the administrator for cause, as required by 7 CFR 205.405.
- (c) Transaction Certificates issued by the Department may be used in sales transactions of certified organic products to identify that the products were produced or handled in accordance with the NOP, and Department rules.
 - (1) The Department shall issue the Transition Certificates upon written request from the organic entity, on forms approved by the Department, which shall contain all information requested on the application.
 - (2) Transaction Certificates may be issued with the producer's identification number and an expiration date beyond which its use is not valid. User shall enter shipment information that includes the shipment date, product name, and volume of product, and may include the lot number if applicable.
 - (3) Transaction Certificates provided by the Department shall only be used by organic entities certified by the Department and only for products covered by Department certification.

35:37-15-8. ODAFF Organic Program Seal

- (a) The Department shall establish a "Oklahoma Department of Agriculture, Food, & Forestry (ODAFF) Organic Program Seal," identifying the Department as the certifying agent. The seal shall be available for use by organic entities that are certified by the Department, provided that the seal is used in compliance with the NOP, 7 CFR 205.303.
- (b) The seal must replicate the form and design as adopted by the Department.
- (c) The seal may be duplicated in the original Department seal colors or may be converted to black and white type-cast.

35:37-15-9. Inspection and Sampling for Registration

- (a) The Department, or designated inspector, may conduct on-site inspections of each registered producer or handler.
- (b) All on-site inspections shall be conducted at a time that the applicant, or an authorized representative of the applicant, can be present; and when land, facilities, or activities demonstrate the applicant's compliance with, or capability to comply with, registration requirements. This does not apply to inspections for the purposes of complaint investigations.
- (c) A written Notice of Inspection shall be completed at the time of inspection, detailing any results of the inspection, or any observations made by the inspector, that would result in approval or denial of the application. A copy of the Notice of Inspection shall be given to the applicant, or authorized representative of the applicant, at the time of inspection.
- (d) The Department, or designated inspector, may conduct reinspections as deemed necessary to investigate complaints. The Department may deny, suspend, or revoke the registration of an organic entity when the organic entity is found to not be in compliance with the law.
- (e) Any denial of entry for inspection purposes will be considered grounds for denial of registration.

35:37-15-10. Marketing When Registered with the ODAFF Organic Program

- (a) The Department shall issue a numbered logo stating, "Registered by the ODAFF Organic Program." The logo shall be annually dated to ensure that the registrant has currently completed registration requirements and shall be made available to the registrant on an annual basis.
- (b) The registrant may display the logo, or copies of the logo, on marketing information used at the location where conducting business; but the logo shall not be attached directly to a product label.
- (c) The "Registered by the ODAFF Organic Program" logo shall only be used for marketing purposes within the state of Oklahoma and shall only be used for raw and processed organically produced agricultural products when authorized by the Department.

35:37-15-11. Organic Certifying Agent Registration

- (a) Any certifying agent that certifies organic entities within the state shall be required to submit an application for registration with the Department. A listing of registered certifying agents shall be maintained by the Department and shall be made available to the public upon request.
- (b) Registration shall be in effect from January 1 of the year registered and shall continue to be in effect through December 31 of the year it was issued, unless cancelled by the registrant or by the Department pursuant to sections (f) and (g) of this rule.
- (c) An annual registration fee of fifty dollars (\$50) shall accompany each application. Registration fee is not prorated throughout the year nor refunded if denied for any reason.
- (d) Registration renewal applications shall be submitted within fifteen (15) working days from last valid date of registration. Any applicant who fails to comply with registration renewal requirements shall pay a fifty dollar (\$ 50) late fee in addition to the annual registration fee to become eligible for registration renewal.
- (e) The application for registration shall be submitted to the Department on an approved application form in the manner prescribed by the Department. The application shall include information about:
 - (1) Business name and address of certifying agent;
 - (2) Name and address of certifying agent's authorized representative;
 - (3) Listing of organic entities' names and addresses located within the state of Oklahoma certified by the certifying agent;
 - (4) The category of organic entity, whether of production or handling.
 - (A) If production, total organic acreage or square footage of land located in the state, and gross sales generated by organic entity.
 - (B) If handling, total gross sales generated by facilities located in the state.
 - (C) Years organic entity has been certified by certifying agent.
- (f) Any certifying agent found to be certifying organic entities located within the state may be assessed a fee up to five hundred dollars (\$ 500) per violation for failure to register with the Department.

(g) If the state refuses registration to a certifying agent for any reason, the applicant shall be notified by writing of the reasons. An informal hearing shall be granted upon notification of denial when requested by the applicant.

(1) The applicant has the right to appear before the Department after receiving a "Denial of Registration" or "Suspension or Revocation of Registration" letter to introduce evidence; either in person or by an agent or attorney at an informal hearing.

(2) If, after the hearing, or if the defendant or the defendant's agent or attorney fails or refuses to appear, the Department determines that the evidence warrants refusal of registration, the Department shall proceed as herein provided.