



United States
Department of
Agriculture

Agricultural
Marketing
Service

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TO: USDA-Accredited Certifying Agents

FROM: Jennifer Tucker, Ph.D.
Deputy Administrator
National Organic Program (NOP)

SUBJECT: Certification of Organic Crop Container Systems

This memo summarizes the rules that accredited certifying agents (certifiers) must follow when determining the eligibility and compliance of container systems for organic crop certification. In this memo, the term container system includes container, hydroponic, and other plant pot-based systems, with or without soil as the growing media. Certifiers and operations must meet the requirements of the Organic Foods Production Act (OFPA) of 1990, as amended (7 USC §§ 6501-6522), and the USDA organic regulations (7 C.F.R. §§ 205.1-205.699).

The OFPA, Section 6502 defines a certified organic farm as “a farm, or portion of a farm, or site where agricultural products or livestock are produced.” Section 6504 specifies the standards for organic production:

“To be sold or labeled as an organically produced agricultural product under this title, an agricultural product shall:

(1) have been produced and handled without the use of synthetic chemicals, except as otherwise provided in this title; (2) except as otherwise provided in this title and excluding livestock, not be produced on land to which any prohibited substances, including synthetic chemicals, have been applied during the 3 years immediately preceding the harvest of the agricultural products; and (3) be produced and handled in compliance with an organic plan agreed to by the producer and handler of such product and the certifying agent.”

The USDA organic regulations implement these requirements at 7 CFR 205.202, stating that “any field or farm parcel from which harvested crops are intended to be sold, labeled, or represented as “organic,” must... have had no prohibited substances, as listed in §205.105, applied to it for a period of 3 years immediately preceding harvest of the crop.” This requirement is referred to as the three-year transition period.

The National Organic Program (NOP) has consistently allowed for the certification of container systems as long as the certifier determines that the system complies with OFPA and the USDA organic regulations. This is consistent with 7 USC 6512, which states: “If a production or handling practice is not prohibited or otherwise restricted under this chapter, such practice shall

be permitted unless it is determined that such practice would be inconsistent with the applicable organic certification program.”

This memo clarifies that the legal requirements related to the three-year transition period apply to all container systems built and maintained on land.

Certifiers must consider two questions when certifying container systems:

- **Eligibility:** Is the land eligible for organic production?
- **Compliance:** Is the system compliant with the USDA organic regulations, and can it maintain compliance?

Eligibility

Consistent with the OFPA and USDA organic regulations, certifiers must confirm that organic crops have been produced and handled without the use of synthetic substances (with the noted exceptions of synthetic substances allowed for organic crop production on the National List of Allowed and Prohibited Substances); and must not be produced on land to which prohibited substances have been applied during the three years immediately preceding the harvest of agricultural crops.

This means that certifiers are to assess land use histories for container system sites, just as they would for an in-ground soil-based system. If a prohibited substance was applied to the land at the farm or site within the three-year period before the first organic harvest, then the harvested crops shall not be sold, labeled, or represented as “organic” until the three-year period has passed. If the operation documents that no prohibited substance was applied within that three-year period, then the land may be eligible for container system production, just as it would be for a soil-based system.

Examples:

- A container operation wishes to construct a container system on a plot of land and provides evidence that no prohibited substance has been applied within three years before the expected harvest. This land may be eligible for organic production.
- A container operation is proposed to be constructed on land that was treated with a prohibited substance within the past year. This land would not be eligible for organic production until three years had passed between the application and projected harvest.

Ongoing Compliance

Once certified, certifiers must assess container systems for ongoing compliance with the USDA organic regulations. No prohibited substances may be applied anywhere in the system, including on the land underlying the system, or in the system itself.

Certifiers must evaluate the compliance of the overall system, including maintaining or improving natural resources, supporting nutrient cycling, promoting ecological balance, and conserving biodiversity.

This memo applies to all new container systems that have not yet been certified under the organic program. It is not retroactive to already certified operations and sites. All currently certified container system operations retain their certification as long as they maintain compliance with the regulations.