



AMERICERT INTERNATIONAL

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Policy on Verification of Three Year Rule Requirements for Field Based Container Production Systems

From: Jonathan Austin, Technical Director

To: Inspectors, Staff, and Container Based Growers

Date: April 26, 2019

Subject: Applicability of Three Year Rule Requirements (NOP section 205.202(b)) for Field Based Container Production Systems

Background:

The USDA NOP organic rules in section 205.202(b) requires 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”. Previously, Americert had not applied this requirement to container based operations, including systems of raising perennial crops in containers where the onsite soil was not a component of the production (i.e. the soil onsite was not used in the container based production and the containers did not have direct contact with the ground), as it was determined, consistent with 2010 National Organic Standards Board guidance on container based systems, that the requirements of this rule did not apply to container based systems. However, there has been recent controversy generally about container based production and specifically about field based container systems. As a result of that controversy, Americert reached out to the USDA National Organic Program for clarification of whether or not Americert was interpreting this aspect of the rule correctly and in line with the NOP’s current thinking on this issue. On the one hand there has been widespread (but not universal) adoption of the approach taken by Americert, and there has been comments and discussion with NOP officials which appeared to suggest that such an approach was in line with the NOP standards and the NOP’s approach to this issue. There is also the NOSB 2010 proposed criteria for container based production which is consistent with Americert’s approach on this issue. On the other hand, there have been some few but vocal critics of this approach. Not all certifying agents use this approach. On this basis, we asked for confirmation from the NOP that the approach used by Americert was a proper interpretation of the NOP rules. We have not been able to obtain a clear statement from the NOP one way or another on this issue. It may be that the NOP itself, having not previously considered this issue deeply enough, does not know where it stands on this issue. To date it has not publicly and specifically approved of the practice, but neither has it specifically and publicly disapproved of this practice. While the NOP is aware that many certifying agents, including Americert has interpreted the rules in this manner, it has not issued a Notice of Noncompliance to Americert on this basis, and has not issued specific guidance or a specific statement approving or condemning the practice. It appears that on this issue, we are left on our own to determine how to proceed.

In an abundance of caution and to provide clear guidance that is not subject to unexpected reversal, Americert has decided that unless and until the USDA NOP provides clear and public approval of this approach, our previous policy of not applying the requirements of section 205.202(b) must be rescinded. The following describes the new policy for how to apply section 205.202(b) to container based operations. This rule will be used in reviewing any new applicants for certification and for any new production areas added to existing certified operations.

Policy:

1. This policy shall apply to field based container operations.
2. A field based container operation is one where containers are arranged in a field on the ground or on any mulch or material performing the function of mulch (such as plastic ground cover, or durable landscape cloth) where the container base is within 6 inches of the ground.



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3. The land on which a field based container operation is installed must meet the requirements of section 205.202(b), in that it must have been managed without the use of a prohibited substance for a period of three years prior to the harvest of the first crop as organic.
4. A field based container operation shall have to demonstrate that the criteria of NOP section 205.202(b) has been met for any field or land on which a field based container operation has been installed or will be installed by providing appropriate documentation and field history of the field in question.
5. The section 205.202(b) criteria will not be applied to other container based operations which are not field based. However, such systems must still comply with the requirements of section 205.200 and all other applicable sections of the rule, including the prevention of contamination from prohibited substances. Whether or not a land use history is required for such operations will be made on a case by case basis.
6. This change will not be applied retroactively. Any operation currently certified prior to this change in policy will remain certified without any additional application of section 205.202(b) for its prior land use. However, any new organic field based container installations, or expansions of existing installations shall have to comply with the new policy.
7. To state the obvious, all organic production systems, including any container based production system, is prohibited from using prohibited synthetic substances for pest control, weed control, or disease control, or any other purpose unless such use or substance is specifically listed as allowed in the NOP organic regulations.
8. Americert may revisit this policy if the NOP provides clear guidance or other public statement which clarifies the issues involved.