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Conseil canadien pour la réglementation biologique (CCRB)

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November 14, 2006

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**In reference to: Canada Gazette, Part I Volume 140, No. 35, Organic  
Products Regulations, pre-published September 2, 2006**

Mr. Manji,

Enclosed please find comments from The Canadian Organic Regulation Council / Conseil canadien pour la réglementation biologique (CORC/CCRB) regarding the Organic Products Regulations contained in Canada Gazette Part I of September 2, 2006. We provide our consent to disclose any of the comments contained herein.

CORC/CCRB is a national organic industry organisation with the mandate to represent the interests of the organic sector regarding national regulatory issues. CORC/CCRB consists of democratically elected representatives from all provinces and territories and one member representing national organic trading enterprises.

As it is CORC/CCRB's mandate to deal with regulatory issues, the organisation has taken a leadership role in coordinating comments on the Organic Products Regulations. The following notes comprise the comments of the entire CORC/CCRB membership.

CORC/CCRB is generally pleased with the Organic Products Regulations. Most of our suggestions for a national regulatory program that we identified three years ago have been included in these proposed regulations. We asked you to ensure the organic standard is referenced (not written into) the organic regulation and you have agreed. We asked that current organic accreditation and certification systems should be employed under the Canadian Organic Regime and you have agreed.

Our support for the proposed Organic Products Regulations is contingent upon the elements mentioned above remaining unchanged in the published regulations. We have been consistent in our demand that the elements in the voluntary organic system (accreditation, certification) will be integrated into the Canada Organic Regime. It is also essential that the Canada Standard should be referenced (not written into) the Organic Products Regulations. Though the Standard is now approved, there are many errors in the new standard—if the standard were to be enforced as is; its requirements would put some organic operators out of business. We need a mechanism that will allow us to fix the standard on an ongoing basis. The standard must be referenced in order to do this.

As noted above, it is imperative that the existing accreditation systems have the right to provide accreditation within the proposed Canada Organic Regime. Though the CFIA has assured us that the Canada Organic Regime will include this provision, the regulation does

not specify that accreditation bodies that are recognised for such by the competent authority will undertake the accreditation. We would like the regulation to contain such a provision.

### **General Comments**

#### **a) implementation period**

Section 16 states “These Regulations come into force on the day on which they are registered.” We suggest that the CFIA should develop an implementation period for enforcement of the regulation. We suggest that the CFIA should require Accreditation Bodies to come into compliance within one year of the date of publishing of the regulation. Operators should be given two years to come into compliance from the date of publishing of the regulation.

#### **b) continued consultation with industry**

The notion that the organic industry should have direct input into the overall design of the Canadian Organic Regime has been part of our request to government since we began the process to ensure implementation of an organic regulation. We request that the concept of an industry advisory group should be included in the regulation. We are not asking the government to devolve its authority, but we want the legal right to be consulted regarding interpretations and changes to the regulation and its constituent elements.

### **Issue-specific Comments**

Please refer to the five documents attached for comments specific to the following issues:

1. Organic Designation - appellation biologique
2. International Marketing - Commerce international
3. Labelling - Étiquetage
4. Certification
5. Accreditation - Accréditation

CORC would like to see the regulations enacted as recommend herein even if that would require another consultation period.

We thank you for the opportunity to comment on the regulations,

Patrick Doherty - British Columbia  
Claire Desmarais - Yukon  
Nedra Stanley - Alberta  
Arnold Taylor - Saskatchewan  
Evellyn Coleman - Northwest Territories  
Janine Gibson - Manitoba  
Jennifer Grant - Ontario  
Robert Beauchemin - Québec  
Anthony Grant - New Brunswick  
Angela Patterson - Nova Scotia  
Raymond Loo - Prince Edward Island  
Michael Rabinowitz - Newfoundland and Labrador  
Stephanie Wells - National Organic Trade

# Canadian Organic Regulation Council's comments on the Organic Products Regulations

## Document # 1 : Organic designation – appellation biologique

INTERPRETATION	DÉFINITIONS
<p>1. The following definitions apply in these Regulations.</p> <p>“organic product” means an agricultural product that has been certified as organic in accordance with these Regulations. (produit biologique)</p> <p style="text-align: center;">PART 1</p> <p style="text-align: center;">ORGANIC PRODUCTS</p> <p>2. (1) Only organic products as defined in section 1 may use the logo set out in the schedule or the designations “Canada Organic” and “Biologique Canada”.</p> <p>(2) Only organic products as defined in section 1 shall be marketed in interprovincial or international trade.</p>	<p>1. Les définitions qui suivent s’appliquent au présent règlement.</p> <p>« produit biologique » Se dit de tout produit agricole qui a été certifié biologique conformément au présent règlement. (organic product)</p> <p style="text-align: center;">PARTIE 1</p> <p style="text-align: center;">PRODUITS BIOLOGIQUES</p> <p>2. (1) Seuls les produits biologiques au sens du présent règlement peuvent porter le label figurant à l’annexe ou les appellations « Biologique Canada » et « Canada Organic ».</p> <p>(2) Seuls les produits biologiques au sens du présent règlement peuvent être commercialisés sur les marchés interprovincial et international.</p>

### Interpretation – agricultural product (in the interpretation of "organic product")

Canada Agricultural Products Act, section 2

1. “agricultural product” means
- (a) an animal, a plant or an animal or plant product,
  - (b) a product, including any food or drink, wholly or partly derived from an animal or a plant, or
  - (c) a product prescribed for the purposes of this Act;

According to this interpretation, we have concerns that the regulation will not apply to products from aquaculture, natural health products, body care products, and products made with agricultural inputs (e.g. clothing).

Although, we were told that these categories of products would be covered if standards were developed, we have yet to understand on what basis this assurance was provided. In our opinion, we need to explicitly list categories of products that do not exactly fit the definition of “agricultural product” provided in the Act.

We would like to mention that Quebec already has organic standards for aquaculture and we recommend that these products be included in the regulation to control, for now, imports, and eventually production within Canada.

## **Interpretation - "organic products"**

The definition for "organic products" may lead to misinterpretation.

According to the Canadian Organic Standards (and most other international standards), there are 2 categories of products that are subject to organic certification:

1. Products that contain at least 95% organic ingredients and that may be labelled "organic products"
2. Products that contain between 70 and 95 % organic ingredients and that cannot be labelled "organic products". They can only use a "Made with organic ingredients" statement related to the organic ingredients. Still, these products are subject to the same certification process<sup>1</sup> used for products belonging to the 95 % + organic ingredients category.

It is unclear whether the definition will be interpreted as including both categories of products or not. In any case, both interpretations would cause some problems depending on what section of the regulation we analyse.

This adds to the fact that articles 10.3 b) and 10.7.3 of the Canadian Standards defining the 2 types of labelling permitted for products containing 95 % + and between 70 and 95% organic ingredients are far from clear. We expect great confusion and a lack of harmonization across the country.

The definition for "organic products" needs to be reviewed.

### **Organic products, subsection 2.(1) vs. products containing 70-95% organic ingredients**

Subsection 2.(1) refers to the definition of "organic products" in section 1, and this definition might be interpreted as including products containing between 70-95% organic ingredients.

We believe that this section allows an operator to use the designation "Canada Organic" and the logo for products containing between 70-95% organic ingredients. Certifiers could find themselves in a position of having to deny certification because the word organic in the designation is not directly related to ingredients and therefore contradict the regulation which allows its use. This is a highly undesirable situation.

In our opinion, both the definition of "organic products" and this subsection must be reviewed, so it is clear that the organic designation and the logo can only be used for products containing more than 95% organic ingredients. (which would be similar to EEC 2092/91, article 10 and NOP, § 205.311 regulations).

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<sup>1</sup> In some organic standards, the certification process may be slightly different for products labelled "Made with organic ingredients" than it is for "organic products", but differences are minors (e.g. in the NOP Standards some substances are permitted in "Made with organic ingredients" products, but not in "organic products".)

## **Organic products, subsection 2.(1) vs. imported products using the "Canada Organic" designation or logo**

Since subsection 2.(1) refers to the definition of "organic products" in section 1, and considering that this definition includes imported products, we believe that this section allows imported products to display the "Canada Organic" designation and logo.

However, in light of some answers and interpretations by various participants, we understand that the intent is that only products that qualify as being from Canada (in reference to other labelling rules) will be allowed to use the "Canada Organic" designation and logo.

In our opinion, subsection 2.(1) does not support this intention and therefore must be reviewed.

## **Organic products, subsection 2.(2)**

Since subsection 2.(2) refers to the definition of "organic products" in section 1, and considering that this definition is imprecise and incomplete, we believe that it will be very difficult to prosecute for some types of infraction. Here is a probable case to illustrate this:

A processor sells a blueberry pie that contains several ingredients. One ingredient (flour) is organic. The other ingredients are not. The % of flour in the product is more or less than 70% (it probably doesn't matter for the outcome). On the principal display of the packaging, we read "Blueberry Pie, Made with Organic Flour". The product is not certified.

CFIA receives a complaint and contacts the processor. He/she has read the regulation and believes that he/she can win the case. CFIA must go ahead with the legal procedures (based on subsection 2.(2)).

Before the court, the processor argues that the product is not labelled as organic. He/she only makes the claim that the flour is organic with invoices supporting the claim. The processor adds that no section in the regulation prohibits the use of the organic claim associated to a certified organic ingredient.

Will the judge agree? Some of us have had informal discussions with lawyers and after a few 30-minute debates, nobody could tell for sure, what would be the final decision.

We believe that the regulation must be clear enough to deal with cases like this one that are bound to happen. The definition of "organic products" and subsection 2.(2) must be reviewed to get better control of the use of the organic designation.

Here is an excerpt of the European regulation for guidance (EEC 2092/91, Article 1, 1):

*This Regulation shall apply to the following products, where such products bear, or are intended to bear, indications referring to the organic production method:*

## Other comments – regulation vs. Canadian Organic Standards

We believe that the Canadian Organic Standards apply only to certified products, and that fraudulent uses of the organic designation must be fully addressed by the regulation.

Besides the blueberry pie example given above, we also identify problems related to following uses:

- Trade marks that bear indications referring to organic. Here is an excerpt of the European regulation for guidance (EEC 2092/91, article 5, 3a):

*By way of derogation from paragraphs 1 to 3, trade marks which bear an indication referred to in Article 2 may continue to be used until 1 July 2006 in the labelling and advertising of products which do not comply with this Regulation provided that:*

*— registration of the trade mark was applied for before 22 July 1991 - unless the second subparagraph below applies - and is in conformity with the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (1), and*  
*— the trade mark is already reproduced with a clear, prominent, and easily readable indication that the products are not produced according to the organic production method as prescribed in this Regulation.*

- Terms biodynamic, biological and ecological or by words of similar intent, including diminutives, which suggest to the purchaser that the product or its ingredients were obtained according to organic production methods Here is an excerpt of the European regulation for guidance (EEC 2092/91, article 2):

*For the purposes of this Regulation a product shall be regarded as bearing indications referring to the organic production method where, in the labelling, advertising material or commercial documents, such a product, its ingredients or feed materials are described in terms suggesting to the purchaser that the product, its ingredients or feed materials have been obtained in accordance with the rules of production laid down in Article 6. In particular, the following terms or their usual derivatives (such as bio, eco etc.) or diminutives, alone or combined, shall be regarded as indications referring to the organic production method throughout the Community and in any Community language, unless they are not applied to agricultural products in foodstuffs or feeding stuffs or clearly have no connection with this method of production:*

*— in Spanish: ecológico,*  
*— in Danish: økologisk,*  
*— in German: ökologisch, biologisch,*  
*— in Greek: βιολογικό,*  
*— in English: organic,*  
*— in French: biologique,*  
*— in Italian: biologico,*  
*— in Dutch: biologisch,*  
*— in Portuguese: biológico,*  
*— in Finnish: luonnonmukainen,*  
*— in Swedish: ekologisk.*

# Canadian Organic Regulation Council's comments on the Organic Products Regulations

## Document # 2 : International Marketing – Commerce international

<p>1. The following definitions apply in these Regulations.</p> <p>“organic product” means an agricultural product that has been certified as organic in accordance with these Regulations. (produit biologique)</p> <p style="text-align: center;"><b>PART 3</b></p> <p style="text-align: center;"><b>ORGANIC CERTIFICATION</b></p> <p style="text-align: center;"><i>International Marketing</i></p> <p><b>9.</b> (1) A person who wishes to market an organic product in export trade shall obtain from a certification body a certificate attesting that the product is an organic product.</p> <p>(2) The application shall be in writing and shall include evidence that the product has been certified as an organic product.</p> <p>(3) The certification body shall issue the certificate if it obtains evidence that the product in respect of which the application was made is an organic product.</p> <p><b>10.</b> A person in import trade who wishes to market a product identified as organic shall obtain an attestation issued by the competent authority of the country of origin, attesting that the product is considered to be organic in that country.</p> <p style="text-align: center;"><i>Required Importation Documents</i></p> <p><b>12.</b> Every imported product identified as organic shall be accompanied at the time of importation into Canada by the attestation required under section 10.</p>	<p>1. Les définitions qui suivent s'appliquent au présent règlement.</p> <p>« produit biologique » Se dit de tout produit agricole qui a été certifié biologique conformément au présent règlement. (organic product)</p> <p style="text-align: center;"><b>PARTIE 3</b></p> <p style="text-align: center;"><b>CERTIFICATION BIOLOGIQUE</b></p> <p style="text-align: center;"><i>Commerce international</i></p> <p><b>9.</b> (1) Quiconque entend exporter un produit biologique en vue de le commercialiser doit obtenir d'un organisme de certification un certificat attestant qu'il s'agit d'un produit biologique.</p> <p>(2) La demande présentée par écrit à l'organisme de certification doit contenir une preuve que le produit a été certifié comme produit biologique.</p> <p>(3) L'organisme de certification délivre le certificat s'il obtient la preuve que le produit visé par la demande est un produit biologique.</p> <p><b>10.</b> Quiconque entend importer un produit identifié comme biologique en vue de le commercialiser doit obtenir l'attestation requise de l'organisme compétent du pays d'origine du produit prouvant que le produit est considéré, dans ce pays, comme biologique.</p> <p style="text-align: center;"><i>Documents requis pour l'importation</i></p> <p><b>12.</b> Tout produit importé identifié comme biologique doit être accompagné, au moment de son importation au Canada, de l'attestation visée à l'article 10.</p>
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## **Use of the expression "organic products"**

Sections 9.(1), (2), (3); 10 and 12 refer to the definition of "organic products" in section 1, and this definition might be interpreted as including products containing between 70-95% organic ingredients.

When a certified product contains between 70-95% organic ingredients, it cannot be certified as an "organic product" nor should it be identified as such on a certificate.

The expression "organic product" should not be used in the regulation for products containing between 70-95% organic ingredients. Such use is in contradiction with established practices in the organic certification industry where the term "organic product" is reserved for products that contain more than 95% organic ingredients.

As indicated in a separate document, the definition and use of the term "organic products" need to be reviewed.

### **Subsection 9.(1) (2) (3)**

Following the October 11, 2006 meeting, we understood that this subsection refers to a certificate for exportation, and that it would not be mandatory (only if a foreign country requests it for example). CFIA would develop a certificate to be used by certification bodies. Any costs for delivering the certificate would be born by the industry (e.g. certified operator, exporter).

Currently some exporters are under the control of a certifier and some exporters are not (they sell certified products from other companies). In the first case, we understand that this certificate for exportation would be in addition to their current organic certificate. To avoid confusion, we recommend that the expression "certificate for exportation" be used.

If the intention is not to make this process mandatory, therefore the term "shall" should not be used in this subsection. We also believe that this process should not be mandatory.

We question the usefulness of this section. We are afraid that if it is not mandatory, this will create confusion. If it remains mandatory, we will be imposing additional costly documentation to Canadian exporters that already have to fill out documents required by the foreign countries that control their importations.

### **Section 10**

We understand that this section will be completely reviewed, therefore we will not comment on the submitted text. However, here is a list of the issues that the regulation must address:

- Imported products must be compliant to the Canadian Standards, or a Standard equivalent to the Canadian Standards.
- The certification process in foreign countries must be controlled by a competent authority or meet international standards. Basic requirements to be met by foreign certifiers must be defined in the regulation.

We would like to see prescriptions on minimal requirements that a foreign attestation must meet (operator's address, name of products, trade mark, identification of certifier, and info prescribed in ISO 65).

## **Section 12 – Required Importation Documents**

We understand that the attestation described in section 10 must be obtained each time products are shipped to Canada. We acknowledge that this practice is currently done in the industry. However, we prefer a regulation that would impose less paperwork. We recommend that the importer gets an updated certificate before the first shipment and then once a year.

We also recommend that importers be somehow listed at the CFIA. For example, in Europe, importers get a licence from local authorities and it is renewed annually. During the year, it may be amended for new products or suppliers.

This last recommendation is based on the assumption that importers of pre-packaged organic products would not have to be certified (a common practice in the international organic industry). However, article 10.3 f of the Canadian Organic Standards might suggest that certification would be mandatory for all importers. We need clarification on this to comment further.

# Canadian Organic Regulation Council's comments on the Organic Products Regulations

## Document # 3 : Labelling – Étiquetage

<p style="text-align: center;">PART 4</p> <p style="text-align: center;">LABELLING</p> <p style="text-align: center;"><i>General Requirements</i></p> <p><b>14.</b> In addition to the requirements under this Part, every organic product shall meet the labelling requirements of the <i>Food and Drugs Act</i> and the <i>Consumer Packaging and Labelling Act</i> and their regulations.</p> <p style="text-align: center;"><i>Specific Requirements</i></p> <p><b>15.</b> The label of an organic product shall contain:</p> <p>(a) the name and the accreditation number of the certification body that has certified as an organic product; and</p> <p>(b) in the case of an agricultural product containing more than one agricultural product, the percentage of each of them that are organic products.</p>	<p style="text-align: center;">PARTIE 4</p> <p style="text-align: center;">ÉTIQUETAGE</p> <p style="text-align: center;"><i>Exigences générales</i></p> <p><b>14.</b> Outre les exigences prévues à la présente partie, tout produit biologique doit satisfaire aux exigences d'étiquetage prévues dans la <i>Loi sur les aliments et drogues</i> et dans la <i>Loi sur l'emballage et l'étiquetage des produits de consommation</i> et leurs règlements.</p> <p style="text-align: center;"><i>Renseignements spécifiques</i></p> <p><b>15.</b> The label of an organic product shall contain:</p> <p>(a) the name and the accreditation number of the certification body that has certified as an organic product; and</p> <p>(b) in the case of an agricultural product containing more than one agricultural product, the percentage of each of them that are organic products.</p> <p><b>15.</b> Les renseignements ci-après figurent sur l'étiquette de tout produit biologique :</p> <p>a) les nom et numéro d'agrément de l'organisme de certification qui a certifié le produit comme produit biologique;</p> <p>b) dans le cas d'un produit agricole qui en contient plusieurs autres, le pourcentage de chacun d'entre eux qui sont des produits biologiques.</p>
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### Section 15 (a) – accreditation number

The requirement of having an accreditation number on the label would be costly for the operators and would not provide any significant improvement to the inspection program.

We strongly recommend withdrawing this requirement from this subsection.

## **Section 15(b) - % of each ingredient on the label**

In light of some reports, we understand that the "% of each ingredient" requirement will be withdrawn, and we strongly support this.

### **General comment**

In light of some reports, it was discussed that the labelling requirements in the CAN/CGSB-32.310 Standards would be copied in the regulation. We do not recommend this. The regulation should rather refer to the labelling requirements of the Organic Standards.

# Canadian Organic Regulation Council's comments on the Organic Products Regulations

## Document # 4 : Certification

INTERPRETATION	DÉFINITIONS
<p><b>1.</b> The following definitions apply in these regulations. "certification body" means a body that is accredited as a certification body in accordance with section 5. (<i>organisme de certification</i>)</p> <p style="text-align: center;"><b>PART 3</b></p> <p style="text-align: center;"><b>ORGANIC CERTIFICATION</b></p> <p style="text-align: center;"><i>Application for Organic Certification</i></p> <p><b>8.</b> (1) Every person who wishes to have an agricultural product certified as an organic product shall apply for that certification in writing to a certification body. (2) The application shall contain: (a) the name of the agricultural product in respect of which the organic certification is being applied for; (b) in the case of an agricultural product containing more than one agricultural product, a statement setting out the percentage of each of them that are organic products; (c) a statement setting out the substances used in the production of the agricultural product and the manner in which those substances are used; and (d) a report setting out in detail the methods of production used in the production of the agricultural product and the control mechanisms in place to ensure that those methods comply at all times with the standards set out in the most recent edition of CAN/CGSB-32.310, the <i>Organic Production Systems — General Principles and Management Standards</i>.</p> <p style="text-align: center;"><i>Procedure for Organic Certification and Certificate</i></p> <p><b>11.</b> (1) A certification body shall certify an agricultural product as an organic product if it determines, after evaluation, that (a) in the case of an agricultural product containing more than one agricultural product, at least 70% of those products are</p>	<p><b>1.</b> Les définitions qui suivent s'appliquent au présent règlement. « organisme de certification » Organisme agréé à ce titre aux termes de l'article 5. (<i>certification body</i>)</p> <p style="text-align: center;"><b>PARTIE 3</b></p> <p style="text-align: center;"><b>CERTIFICATION BIOLOGIQUE</b></p> <p style="text-align: center;"><i>Demande de certification biologique</i></p> <p><b>8.</b> (1) Quiconque souhaite faire certifier un produit agricole comme produit biologique présente par écrit une demande à cet effet à un organisme de certification. (2) La demande comporte les éléments suivants : a) le nom du produit agricole pour lequel la certification biologique est demandée; b) s'il s'agit d'un produit agricole qui en contient plusieurs autres, la mention du pourcentage de chacun d'entre eux qui sont des produits biologiques; c) la mention des substances utilisées dans la production du produit agricole et la façon dont elles sont utilisées; d) un rapport détaillé des méthodes utilisées dans la production du produit agricole et des mécanismes de contrôle mis en place pour veiller à ce que ces méthodes soient conformes, en tout temps, aux exigences de la version la plus récente de la norme CAN/CGSB-32.310, intitulée <i>Systèmes de production biologique: Principes généraux et normes de gestion</i>.</p> <p style="text-align: center;"><i>Procédure de certification biologique et certificat</i></p> <p><b>11.</b> (1) L'organisme de certification certifie qu'un produit agricole est un produit biologique s'il constate, après vérification, que : a) dans le cas d'un produit agricole qui en contient plusieurs autres, au moins 70 % d'entre eux sont des produits biologiques; b) les substances utilisées dans la production du produit agricole sont celles</p>

<p>organic products;  <b>(b)</b> the substances used in its production of the agricultural product are those set out and used in the manner described, in the most recent edition of CAN/CGSB-32.311, <i>Organic Production Systems — Permitted Substances List</i>; and</p> <p><b>(c)</b> the methods of production used and the control mechanisms in place comply with the requirements set out in the most recent edition of CAN/CGSB-32.310, <i>Organic Production Systems — General Principles and Management Standards</i> and with the general principles respecting organic production provided for in those standards.</p> <p><b>(2)</b> The organic certification remains in effect for a period of one year from the day on which it is granted.</p> <p style="text-align: center;"><i>Suspension and Cancellation</i></p> <p><b>13.</b> (1) Subject to subsection (2), the certification body or the Agency shall suspend the organic certification under section 11 if</p> <p><b>(a)</b> the holder of the organic certification has not complied with any provision of the Act or these Regulations;</p> <p><b>(b)</b> in the case of an agricultural product containing more than one agricultural product, less than 70% of the agricultural products are organic products;</p> <p><b>(c)</b> the substances used by the holder in the production of the agricultural product are not those set out, and used in the manner described, in the most recent edition of CAN/CGSB-32.311, <i>Organic Production Systems — Permitted Substances List</i>; and</p> <p><b>(d)</b> the methods used by the holder in the production of the agricultural product do not comply with the requirements set out in the most recent edition of CAN/CGSB-32.310, <i>Organic Production Systems — General Principles and Management Standards</i> and with the general principles respecting organic production provided for in those standards.</p> <p><b>(2)</b> No organic certification may be suspended unless the certification body or the Agency, as the case may be, has</p> <p><b>(a)</b> notified the holder that there are grounds for suspension;</p>	<p>mentionnées dans la version la plus récente de la norme CAN/CGSB-32.311, intitulée <i>Systèmes de production biologique — Listes des substances permises</i>, et sont utilisées de la façon décrite dans ce document;</p> <p><b>(c)</b> les méthodes de production utilisées et les mécanismes de contrôle mis en place sont conformes aux exigences de gestion et aux principes généraux de certification biologique prévus dans la version la plus récente de la norme CAN/CGSB-32.310, intitulée <i>Systèmes de production biologique : Principes généraux et normes de gestion</i>;</p> <p><b>(2)</b> La certification biologique est valide pour une période d'une année à compter de la date de sa délivrance.</p> <p style="text-align: center;"><i>Suspension ou annulation</i></p> <p><b>13.</b> (1) Sous réserve du paragraphe (2), l'organisme de certification ou l'Agence suspend la certification visée à l'article 11 dans les cas suivants :</p> <p><b>a)</b> le titulaire ne se conforme pas à la Loi ou au présent règlement;</p> <p><b>b)</b> dans le cas d'un produit agricole qui en contient plusieurs autres, moins de 70 % d'entre eux sont des produits biologiques;</p> <p><b>c)</b> le titulaire utilise dans la production du produit agricole des substances autres que celles mentionnées dans la version la plus récente de la norme CAN/CGSB-32.311, intitulée <i>Systèmes de production biologique — Listes des substances permises</i>, ou ne les utilise pas de la façon qui y est prévue;</p> <p><b>d)</b> le titulaire utilise des méthodes de production qui ne sont pas conformes aux exigences de gestion et aux principes généraux de certification biologique prévus dans la version la plus récente de la norme CAN/CGSB-32.310, intitulée <i>Systèmes de production biologique : Principes généraux et normes de gestion</i>;</p> <p><b>(2)</b> La certification biologique ne peut être suspendue que si l'organisme de certification ou l'Agence, selon le cas, a rempli les conditions suivantes :</p> <p><b>a)</b> il a avisé le titulaire de l'existence de motifs justifiant la suspension;</p> <p><b>b)</b> il lui a fourni copie d'un rapport précisant ces motifs, les mesures correctives à prendre pour éviter la</p>
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<p>(b) provided the holder with a copy of a report that specifies the grounds for suspension, the required corrective measures and the period within which those measures must be implemented to avoid suspension; and</p> <p>(c) sent a notice of suspension to the holder and, in the case of the certification body, sent a copy of it to the Agency.</p> <p>(3) A suspension of the organic certification remains in effect until the required corrective measures are implemented and verified.</p> <p>(4) The certification body or the Agency shall cancel the certification if</p> <p>(a) the holder has not implemented the required corrective measures within the specified period or within a longer period allowed under subsection (5); or</p> <p>(b) the application made under section 8 contains false or misleading information.</p> <p>(5) If the holder has not implemented the required corrective measures or their implementation is not possible within the specified period, the certification body may obtain from the Agency a longer period to implement those measures.</p> <p>(6) No certification may be cancelled unless the certification body or the Agency, as the case may be, has</p> <p>(a) advised the holder of an opportunity for them to be heard in respect of the cancellation, and the holder was given that opportunity either orally or in writing; and</p> <p>(b) sent a notice of the cancellation to the holder and, in the case of the certification body, sent a copy of it to the Agency.</p>	<p>suspension et le délai dans lequel les mesures doivent avoir été prises;</p> <p>c) il lui a envoyé un avis de suspension et, s'agissant de l'organisme de certification, il a aussi envoyé copie de l'avis à l'Agence.</p> <p>(3) La suspension demeure en vigueur jusqu'à ce que les mesures correctives aient été prises et vérifiées.</p> <p>(4) L'organisme de certification ou l'Agence annule la certification biologique dans les cas suivants :</p> <p>a) le titulaire n'a pas pris les mesures correctives voulues dans le délai imparti ou à l'expiration de la période de prolongation visée au paragraphe (5);</p> <p>b) la demande faite en application de l'article 8 contient des renseignements faux ou trompeurs.</p> <p>(5) Si le titulaire n'a pas pris les mesures correctives voulues ou n'est pas en mesure de les prendre dans le délai imparti, il peut obtenir de l'Agence une prolongation lui permettant de les prendre.</p> <p>(6) La certification biologique ne peut être annulée que si l'organisme de certification ou l'Agence, selon le cas, a rempli les conditions suivantes :</p> <p>a) il a donné au titulaire la possibilité de se faire entendre, de vive voix ou par écrit;</p> <p>b) il lui a envoyé un avis d'annulation et, s'agissant de l'agent de certification, il a aussi envoyé copie de l'avis à l'Agence.</p>
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## **Subsection 8(1), 11(1) and 13(1)(b) – Certification of agricultural products**

### Canada Agricultural Products Act, section 2

#### 2. “*agricultural product*” means

- (a) *an animal, a plant or an animal or plant product,*
- (b) *a product, including any food or drink, wholly or partly derived from an animal or a plant, or*
- (c) *a product prescribed for the purposes of this Act;*

When considering this interpretation, we are concerned that the requirement for certification in this regulation will not apply to products from aquaculture, natural health products, body care products, and products made with agricultural inputs (e.g. clothing). These categories of product do not exactly fit the definition of “agricultural product” provided in the Act and are not explicitly listed in the regulation.

### **Subsection 8(2)(b) – Agricultural product containing agricultural product**

We recommend that the word "ingredient" be defined and used where appropriate in the regulation.

### **Subsection 8(2)(d) – ... ensure that those methods comply at all times ...**

We believe that the expression "at all times" may potentially create some confusion under some circumstances. Sometimes, there are implementation periods after the adoption of updated standards.

We consider that this expression is not essential and we recommend removing it.

### **Section 11 – Procedure for Organic Certification and Certificate**

We recommend the following to replace the current title: Procedure for Organic Certification and Organic Compliance Certificate. We recommend defining the term "Certificate" in the regulation.

### **Section 8(1) – Applications for certification and notification to the CFIA**

There is no section in the regulation that ensures the CFIA will get, on a regular basis, a complete list of operators and certified products currently on the market. We recommend that a section covering the collection of data be included in the regulation.

This can be done in the regulation in the detail, and here is an excerpt of the EU regulation for guidance (Article 8):

*1. Any operator who produces, prepares or imports from a third country products as specified in Article 1 for the purpose of marketing them shall:*

*(a) notify this activity to the competent authority of the Member State in which the activity is carried out; such notification shall include the information specified in Annex IV;*

...

*2. Member States shall designate an authority or body for the reception of notifications. Member States may provide for the communication of any additional information which they consider to be necessary for effective supervision of the operators concerned.*

*3. The competent authority shall ensure that an updated list containing the names and addresses of operators subject to the inspection system is made available to interested parties.*

It can also be done in the regulation by way of a general section that refers to an agreement between the Agency and the certifying body. If this option is chosen, we recommend adding it in section 5 on accreditation. Here is an excerpt of the Organic Foods Production Act of 1990, SEC. 2116 for guidance:

*SEC. 2116. (7 U.S.C. 6515) REQUIREMENTS OF CERTIFYING AGENTS.*

*(d) AGREEMENT – Any certifying agent shall enter into an agreement with the Secretary under which such agent shall –*

*(1) agree to carry out the provision of this title; and*

*(2) agree to such other terms and conditions as the Secretary determines appropriate.*

### **Subsection 11(1)(a) – Procedure for Organic Certification and Certificate**

A product cannot be certified as organic if it contains less than 95% organic ingredients.

This subsection needs to be reviewed along with the interpretation of "organic product" (section 1) and section 2. See previous comments on sections 1 and 2 for more details.

### **Subsection 11(2) – Organic Certification in effect for one year**

We are concerned that the interpretation of this subsection may cause some problems.

We recommend the review of this subsection keeping in mind that organic certification must be renewed on an annual basis, but operators and certifiers also need some flexibility.

We also recommend that the subsection takes into account that certification can be suspended or cancelled before it expires.

### **Section 13 – Suspension and Cancellation of the organic certification by the Agency**

According to section 13, the agency may suspend or cancel the organic certification. Under normal circumstances (i.e. when a certification body is duly accredited), the suspension or cancellation is usually done only by the certification body. We recommend that the CFIA validate whether the European Union might see a conflict of interest that might adversely hurt CFIA's application to the EU third country list.

### **Section 13 – Suspension and Cancellation**

We are concerned that the wording of this section may cause some problems because it implies that organic certification is always suspended or cancelled for all the products covered by the organic certification.

It may happen that certification is suspended or cancelled for a limited number of products, and we recommend the review of this subsection accordingly.

We also recommend that this subsection make a clear distinction among different potential scenarios:

- Organic certification is suspended or cancelled because of cessation of production.
- Organic certification is suspended or cancelled because of unresolved non-compliances.
- Organic certification is suspended or cancelled because of fraud.

In the first scenario, we believe that an applicant should be eligible for certification if a new application is made.

In the third scenario, we believe that a person should not be eligible for certification for a period to be determined. In the United States, it is a period of 5 years (Organic Foods Production Act of 1990, SEC.2120 (c) (1) (C)).

In the second scenario, we will forward our recommendation after further consultation. As guidance, Europe imposes no delays and there is a period of 5 years in the United States and Japan.

# Canadian Organic Regulation Council's comments on the Organic Products Regulations

## Document # 5 : Accreditation - Accréditation

INTERPRETATION	DÉFINITIONS
<p><b>1.</b> The following definitions apply in these Regulations. “accreditation body” means a body that has entered into an agreement with the Agency under subsection 14(1) of the <i>Canadian Food Inspection Agency Act</i> to administer certain tasks, including assessing, recommending and monitoring the accreditation of certification bodies. (<i>organisme d'accréditation</i>)</p>	<p><b>1.</b> Les définitions qui suivent s'appliquent au présent règlement. « organisme d'accréditation » Organisation qui a conclu un accord avec l'Agence aux termes du paragraphe 14(1) de la <i>Loi sur l'Agence canadienne d'inspection des aliments</i> notamment pour évaluer, recommander et vérifier l'agrément des organismes de certification. (<i>accreditation body</i>)</p>
<p style="text-align: center;">PART 2</p> <p style="text-align: center;">CERTIFICATION BODIES</p> <p style="text-align: center;"><i>Application for Accreditation</i></p>	<p style="text-align: center;">PARTIE 2</p> <p style="text-align: center;">ORGANISMES DE CERTIFICATION</p> <p style="text-align: center;"><i>Demande d'agrément</i></p>
<p><b>4.</b> Any person who wishes to be accredited as a certification body shall apply for the accreditation in writing to an accreditation body and shall undergo an evaluation approved by the Agency that tests their knowledge of the principles and practices respecting organic certification.</p>	<p><b>4.</b> Quiconque souhaite être agréé à titre d'organisme de certification présente par écrit une demande à cet effet à un organisme d'accréditation et subit une évaluation, approuvée par l'Agence, qui vise à mesurer sa connaissance des principes et pratiques en matière de certification biologique.</p>
<p style="text-align: center;"><i>Accreditation</i></p>	<p style="text-align: center;"><i>Agrément</i></p>
<p><b>5.</b> On the recommendation of an accreditation body, the Agency shall accredit the applicant as a certification body and provide the applicant with an accreditation number.</p>	<p><b>5.</b> Sur recommandation d'un organisme 'accréditation, l'Agence agréé le demandeur à titre d'organisme de certification et lui remet un numéro d'agrément.</p>
<p><b>6.</b> If the accreditation body refuses to recommend the accreditation of the applicant, the accreditation body shall send a notice to the applicant, by registered mail, stating the reasons for the decision and advising the applicant of their right to request that the Agency review the decision. The accreditation body shall also send a copy of the notice, including the reasons, to the Agency.</p>	<p><b>6.</b> Si l'organisme d'accréditation refuse de recommander l'agrément, il envoie au demandeur, par courrier recommandé, un avis motivé de sa décision l'informant par ailleurs qu'il peut en demander révision à l'Agence. Il envoie aussi une copie de cet avis à l'Agence.</p>
<p style="text-align: center;"><i>Suspension and Cancellation</i></p>	<p style="text-align: center;"><i>Suspension et annulation de l'agrément</i></p>
<p><b>7.</b> (1) Subject to subsection (2), on the recommendation of the accreditation body</p>	<p><b>7.</b> (1) Sous réserve du paragraphe (2), l'Agence, de son propre chef ou sur</p>

<p>or on the Agency's own decision, the Agency shall suspend the accreditation of a certification body if the certification body fails to comply with any provision of the Act or these Regulations.</p> <p>(2) No accreditation may be suspended unless the Agency has</p> <p>(a) notified the certification body that there are grounds for suspension;</p> <p>(b) provided the certification body with a copy of a report that specifies the grounds for suspension, the required corrective measures and the period within which those measures must be implemented to avoid suspension; and</p> <p>(c) sent a notice of suspension to the certification body.</p> <p>(3) The suspension of an accreditation remains in effect until the required corrective measures have been implemented and verified.</p> <p>(4) On the recommendation of the accreditation body or on the Agency's own decision, the Agency shall cancel the accreditation if</p> <p>(a) the certification body has not implemented the required corrective measures within the specified period or within a longer period provided under subsection (5); or</p> <p>(b) the application made under section 4 contains false or misleading information.</p> <p>(5) If the certification body has not implemented the required corrective measures or their implementation is not possible within the specified period, the certification body may obtain from the Agency a longer period to implement those measures.</p> <p>(6) No accreditation may be cancelled unless the Agency has</p> <p>(a) advised the certification body of an opportunity for it to be heard in respect of the cancellation and the certification body was given that opportunity either orally or in writing; and</p> <p>(b) sent a notice of the cancellation to the certification body.</p>	<p>recommandation d'un organisme d'accréditation, suspend l'agrément de l'organisme de certification qui ne se conforme pas à la Loi ou au présent règlement.</p> <p>(2) L'agrément ne peut être suspendu que si l'Agence a rempli les conditions suivantes :</p> <p>a) elle a avisé l'organisme de certification de l'existence de motifs justifiant la suspension;</p> <p>b) elle lui a fourni copie d'un rapport précisant ces motifs, les mesures correctives à prendre pour éviter la suspension et le délai dans lequel les mesures doivent avoir été prises;</p> <p>c) elle lui a envoyé un avis de suspension.</p> <p>(3) La suspension demeure en vigueur jusqu'à ce que les mesures correctives aient été prises et vérifiées.</p> <p>(4) L'Agence, de son propre chef ou sur recommandation d'un organisme d'accréditation, annule l'agrément de l'organisme de certification dans les cas suivants :</p> <p>a) l'organisme de certification n'a pas pris les mesures correctives voulues dans le délai imparti ou à l'expiration de la période de prolongation visée au paragraphe (5);</p> <p>b) la demande faite en application de l'article 4 contient des renseignements faux ou trompeurs.</p> <p>(5) Si l'organisme de certification n'a pas pris les mesures correctives voulues ou n'est pas en mesure de les prendre dans le délai imparti, il peut obtenir de l'Agence une prolongation lui permettant de les prendre.</p> <p>(6) L'agrément ne peut être annulé que si l'Agence a rempli les conditions suivantes :</p> <p>a) elle a donné à l'organisme de certification la possibilité de se faire entendre, de vive voix ou par écrit;</p> <p>b) elle lui a envoyé un avis d'annulation.</p>
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## **Section 1 and 5 – Interpretation of "accreditation body" and "organisme d'accréditation"**

Section 1 states that the tasks of an "accreditation body" will be to assess, recommend and monitor the accreditation of certification bodies, and section 5 states that the Agency accredits the certification body.

It does not correspond to the ISO terminology that specifies that an accreditation body both assesses and accredits.

In light of this and to avoid any misleading about the role granted to these bodies regarding accreditation, we recommend that the term "accreditation body" be replaced by "evaluation or assessment body" and "organisme d'accréditation" be replaced by "organisme d'évaluation".

## **Sections 1, 4, 5, 6 and 7 – accreditation vs agrément**

Given the previous statement, we question the use of the word "accreditation" in these sections. We recommend that the English word "accreditation" be replaced by the word "approval" in order to avoid any confusion. Moreover the term "approval" and its equivalent in French ("agrément") must be defined.

## **Section 1 (Interpretation) – number of accreditation bodies and monitoring**

In reference to section 1 and in light of some answers, we understand that the number of "accreditation bodies" that may enter into an agreement with the Agency will only be limited by the ability of the bodies to meet CFIA's requirements, the size of the market and competition. We also understand that CFIA cannot require a body having entered into an agreement with the Agency to have an office in Canada (discriminatory measure).

Although it is not in writing in the regulation, we also understand that the CFIA intends to delegate the assessment of the certification bodies' activities including their monitoring as much as possible to the bodies having entered into an agreement with the Agency.

We believe that it is essential for an "accreditation body" to have at least one office in Canada to conduct meaningful monitoring activities. Therefore, we still question whether the discriminatory argument really applies in this regulation considering the surveillance role the "accreditation bodies" will have to play.

We also advocate that accreditation bodies belonging to administrative departments acting as competent authorities for foreign governments (e.g. USDA) as well as accreditation bodies which the competent authority of a foreign country has delegated to an exclusive role of control regarding the bodies certifying organic products on its territory, should not be eligible to enter into an agreement with the CFIA to accredit or to assess certifying bodies carrying out activities in Canada because of potential conflict of interest between their domestic responsibilities and the duties they will have to fulfill in Canada.

We recommend that the requirements related to the monitoring of the certification bodies be described with more details in the regulation, and that they ensure an adequate and effective level of surveillance.

## **Section 4 – Application for Accreditation**

We understand that an applicant (certifying body) would directly apply for accreditation to a body having entered into an agreement with CFIA. Considering that the Agency ultimately accredits the applicants (section 5), we believe that the Agency should be made aware of the applications that are sent to the bodies that have entered into agreement with the CFIA.

We recommend that the regulation prescribes that the Agency gets a copy of any application sent to an "accreditation body".

We also recommend that a section be added before section 4 stating that the Agency will maintain and publish a list of the "bodies" that have entered into an agreement with the Agency.

The regulation does not specify the type of agreement the certification body will have to enter into and with who? With the Agency? The "accreditation body"? Both? We recommend that the regulation provides this information.

#### **Section 4 – certification body shall undergo an evaluation approved by the Agency**

In light of some answers, we understand that the requirements for the evaluation of the certification bodies are in the Quality Manual.

We believe that in the case a certification body (most likely after the accreditation would have been denied suspended or cancelled) would dispute the decision of the Agency, it would be better to have more details on the evaluation criteria in the regulation.

We recommend that some basic requirements for the evaluation be defined in the regulation (see NOP and EU regulations for guidance).

#### **Section 4 – testing of knowledge of the principles and practices respecting organic certification**

The regulation indicates that knowledge will be tested. The regulation should also indicate that expertise will be evaluated. Here is an excerpt of the Organic Foods Production Act of 1990, (SEC. 2115) for guidance:

*(b) REQUIREMENTS. – To be accredited as a certifying agent under this section, a governing State official or private person shall –*

*(1) ...*

*(2) have sufficient expertise in organic farming and handling techniques as determined by the Secretary; and*

*(3) ...*

#### **Section 6 and 7 – Motives for Refusal, Suspension and Cancellation of Accreditation**

In light of some answers, we understand that the motives for the refusal, suspension and cancellation of an accreditation are in the Quality Manual.

We believe that in the case a certification body (most likely after the accreditation would have been denied suspended or cancelled) would dispute the decision of the Agency, it would be better to have more details in the regulation about the requirements for accreditation.

#### **Section 7 – Suspension and Cancellation of Accreditation**

Section 7 states that the Agency may suspend the accreditation of a certification body following the recommendation of the "accreditation body" or based on the Agency's own decision. We recommend that the agreement between the "certification body" and the Agency as defined in Section 1 be meaningful and that any suspension or cancellation decision be always done in collaboration with the "accreditation body".

We recommend that the regulation allows "accreditation body" on behalf of the Agency to suspend or cancel a certification.

### **Subsection 7.3 – verification of corrective measures**

There is no indication in subsection 7.3 on who verifies if corrective measures have been implemented. This subsection needs clarification.

### **Section 7– Suspension and Cancellation of Accreditation and implementation**

We believe that the regulations should be more explicit on what can and can't be done following a suspension or cancellation of an accreditation. Here is a list of questions that illustrate what needs to be covered in the regulation:

In the case of a suspension, can the certification body still issue organic certificates? If not, what happens to the operators certified by this body if their current certificate is about to expire?

In the case of a suspension or cancellation, what will the operators have to do? Will their organic certificates become invalid immediately? Will they be allowed a minimum delay to find another certifier? How long will this delay be?

We recommend that basic guidelines that would manage the transition period be included in the regulation.