



## **Instruction**

### **Recommended Penalties for Violations of Specific Regulatory Requirements**

#### **1. Purpose and Background**

This instruction and the attached penalty matrix are provided to promote consistent application of the National Organic Program (NOP) regulations by accredited certifying agents. The penalty matrix was formed by recommendations from the National Organic Standards Board (NOSB). It provides examples of noncompliances of the NOP production, handling, and labeling requirements found at 7 Code of Federal Regulations (CFR) part 205, National Organic Program.

The penalty matrix is divided into five sections: (1) general, (2) crops, (3) livestock, (4) handling, and (5) labeling. Each section has six columns: (1) CFR citation, (2) paraphrased regulatory requirements, (3) minor issues – conditions for continued certification, (4) noncompliance – Notice of Noncompliance (NONC), (5) major noncompliance – denial or proposed suspension of certification, and (6) major noncompliance – denial or proposed revocation of certification. Definitions for each column are provided below.

#### **2. Scope**

This guidance may be used by accredited certifying agents and the NOP to address violations of 7 CFR part 205.

#### **3. Authority**

The NOP accredits certifying agents under the authority of the Organic Foods Production Act of 1990, as amended (7 U.S.C. §§ 6501 et seq.), as described in Title 7 of CFR, Part 205, National Organic Program. Accredited certifying agents have a responsibility, under 7 CFR § 205.501(a)(21), to comply with, implement, and carry out any terms and conditions determined by the Agricultural Marketing Service (AMS) Administrator to be necessary as a general accreditation requirement. This responsibility includes issuing noncompliances or proposed adverse actions to certified operations which are consistent with the recommended penalties as described in the penalty matrix.

#### **4. Policy**

##### **4.1. General**

The penalty matrix provides suggested suspension time periods for noncompliances in this category. These time periods are recommendations and are not prescriptive. Violations of certain livestock and crops regulatory provisions may require additional terms required by existing regulations, such as the removal of livestock or land from organic production. The



inclusion of suspension time period guidelines in the penalty matrix does not remove an accredited certifying agent's existing responsibility to align the terms of every adverse action notice with applicable and specific sections of the USDA organic regulations.

Case-specific noncompliances may not always appear as specific examples in the penalty matrix. However, accredited certifying agents should be able to reasonably align an actual noncompliance with a penalty matrix category example or description. Accredited certifying agents should consult the NOP when they are uncertain of proper action or if it is apparent that a particular violation may warrant the consideration of the case for possible civil penalties by NOP.

The NOP may revise and update the penalty matrix, when appropriate, to address identified violation types and trends and ongoing review of issued adverse actions by certifiers.

#### 4.2. **Penalty Matrix Definitions**

1. CFR Citation: The specific regulatory requirement found in 7 CFR part 205.
2. Requirements: A paraphrased description of the specific regulatory requirement for certified operations.
3. Minor Issues – Conditions for Continued Certification: The USDA organic regulations allow minor noncompliances for certified operations, provided they are corrected within a specified period as a condition for continued certification. This column of the Penalty Matrix provides examples of minor issues that require correction, but do not preclude certification. Examples of such minor noncompliances include lack of organized records and minor paperwork errors. Inspectors record these as findings in onsite inspection reports as issues of concern and report the findings during closing meetings. Accredited certifying agents document and issue these findings as “conditions for continued certification” and require correction during a specific period, but not later than prior to the next annual update.
4. Noncompliances – “Notice of Noncompliance (NONC)”: Noncompliances in this category must be corrected prior to issuing a new certification and must be promptly and sufficiently corrected by certified operations. Examples of this level of noncompliance include failure to submit timely information, failure to update the organic system plan, and inadequate recordkeeping. Inspectors record these as findings in onsite inspection reports and report these findings during closing meetings. Accredited certifying agents classify and issue these findings in a “Notice of Noncompliance” to the operation and report the noncompliance(s) to the NOP Appeals Team. If the NONC is not corrected or resolved, the next step would be a Notice of Proposed Suspension, issued after the operation has been given an opportunity to correct the violation.



5. Major Noncompliances – “Denial of Certification” or “Combined NONC with Proposed Suspension of Certification”: Noncompliances in this category affect the integrity of the organic system or product. They may include unresolved noncompliances previously issued. Inspectors record these as findings in onsite inspection reports and during closing meetings. Accredited certifying agents issue these findings in a combined “Notice of Noncompliance with Proposed Suspension.” The notice must include a statement of the operation’s 30-day right to appeal the notice to the Administrator or recognized State Organic Program (SOP).
6. Major Noncompliances – “Denial of Certification” or “Combined NONC with Proposed Revocation of Certification”: Noncompliances in this category are egregious and willful, and may involve falsification of records or documents. Examples of this level of noncompliance include willful sale of conventional products as organic, use of prohibited substances, use of conventional feed, and denial of access to pasture for ruminant livestock. Inspectors record these as findings in onsite inspection reports and report the findings during closing meetings. Accredited certifying agents issue these findings as a combined “Notice of Noncompliance with Proposed Revocation”. The notice must include a statement of the operation’s 30-day right to request mediation and/or appeal the notice to the Administrator or recognized SOP.

## 5. References

### **NOP Regulations (as amended to date)**

7 CFR § 205.501(a)(21) General requirements for accreditation.

(a)...A private or governmental entity accredited as a certifying agent under this part must:

(21) Comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary.

Approved on September 12, 2012