



Compliance Scenario Exercises

Ensuring Consistent, Thorough Enforcement
through Sound & Sensible Principles

February 19, 2014

ACA Training – San Diego, CA

USDA Agricultural Marketing Service

National Organic Program



Today's Training Objectives



1. Preview the draft Penalty Matrix and discuss how to use it
2. Discuss the differences among Minor Issues, Notices of Noncompliance, and Adverse Actions
3. Use violation scenarios to practice applying the draft Penalty Matrix

Objective 1: The Draft Penalty Matrix



- Help certifying agents distinguish among the appropriate penalties in response to violations of the USDA organic regulations
- Increase consistency in the penalties issued by certifying agents

Draft Penalty Matrix



- Part of the “Sound and Sensible” initiative
 - Previous versions of the Matrix were lengthy and complicated
 - Distinction between need for Minor Issues Letter and need for NONC unclear
- The revised Matrix will be simplified, but not substantively different in policy from previous versions of the Matrix with concept of progressive corrective action.

Objective 2: Responding to Noncompliance



1. Minor Issues – Conditions for New or Continued Certification
2. Notice of Noncompliance
3. Major Noncompliances – Denial or Proposed Suspension of Certification
4. Major Noncompliances (willful violations) – Denial or Proposed Revocation of Certification

Evidence



All compliance actions should be supported by a preponderance of evidence, i.e. evidence indicting a greater than 50% likelihood that a violation has occurred.

- Direct Evidence: testimony by firsthand witnesses; documents and photos; test results; sales receipts and labels
- Circumstantial Evidence: secondhand witness testimony

Minor Issues



- No systemic failure in Organic System Plan (OSP) design or implementation
- Can be corrected easily in a short time without a corrective action plan
- Certification can be granted before correction but:
 - Correction must occur within specified time
 - Written records of issue and its correction required

Notice of Noncompliance (NONC)



- No systemic failure in OSP design or implementation
- Violation significant enough in nature or scope to require a corrective action plan
- If issued to an applicant for certification, noncompliance must be resolved prior to certification

Combined Notices



When correction of a noncompliance is not possible, you may issue a:

- Combined NONC and Notification of Denial of Certification (205.405(a))
- Combined NONC and Proposed Suspension or Revocation of Certification (205.662(c))

Proposed Suspension or Denial



- Failure to resolve a previous NONC
- Systemic failure of OSP design or implementation that shows inability to comply with the regulations
- Application (e.g. accidental or un-willful) of prohibited substance

Proposed Revocation or Denial



- Deliberate violation of the regulations
- Falsification or concealment of records
- Refusal to allow inspection or access to records

Objective 3: Using the Matrix



1. Review the identified noncompliance and the certifier response
2. Find the matching violation description in the Draft Penalty Matrix
3. Determine whether the certifier took appropriate action

Summary: NOP Penalty Matrix



- Goal is to increase consistency among adverse actions and other certification determinations by certifiers
- Important to distinguish minor issues from noncompliances and not require NONCs for every finding