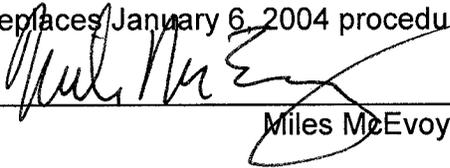




DATE: March 2, 2004

CANCELS: Replaces January 6, 2004 procedure

APPROVED:  _____, Program Manager
Miles McEvoy

Organic Food Program Procedure

PRO-OFP-040 Compliance and Appeal Procedures

Definition of terms:

- Major Noncompliance means a finding of noncompliance that effects the integrity of the organic system or the organic product.
- Minor Noncompliance means a finding of noncompliance that is correctable and does not effect the integrity of the organic system or the organic product.
- A Notice of Noncompliance is equivalent to the term Notice of Correction that is utilized in the State of Washington for notifying a responsible party of violations with applicable laws and rules. RCW 43.05.100.

Notice of Noncompliance (NONC)

A Notice of Noncompliance shall be issued when the WSDA Organic Food Program determines that an applicant for certification or a certified operation is found to be in violation of the National Organic Program, European Organic Standards, or other applicable standard.

Required Components of a Notice of Noncompliance:

1. A description of each of the Conditions Not in Compliance.
2. The facts upon which the notification of noncompliance is based and the relevant sections of the organic standards that are in violation.
3. The Required Corrective Action that must be taken by the operation in order to correct the violation.
4. The Timeline for Completing the Required Corrective Action.
5. The Timeline for rebutting the Notice of Noncompliance.
6. Notification that if the Required Corrective Actions are not completed within the required time period, or if there is no rebuttal of the Notice of Noncompliance within the required timeline that further action, including suspension or revocation of certification, may occur.

Resolution process

The WSDA Organic Food Program will verify by inspection or written documentation that the Required Corrective Actions have been completed. When an operation completes the Required Corrective Action the Organic Food Program will send the certified operation a written notification that the noncompliance issue has been resolved.

Notice of Denial of Certification Notice of Proposed Suspension of Certification Notice of Proposed Revocation of Certification

Situations that Require Issuance of a Notice of Denial of Certification:

1. Applicant for certification has not taken required corrective action specified in an NONC by the date specified in the NONC.
2. The corrective actions implemented/proposed by the applicant are not sufficient for the applicant to qualify for certification.
3. Findings indicate that an applicant for certification has committed a major noncompliance.

Situations that Require Issuance of a Notice of Proposed Suspension or Revocation of Certification:

1. Certified operation has not taken required corrective action specified in an NONC by the date specified in the NONC.
2. Findings indicate that the certified operation has committed a major noncompliance.
3. Repeat minor violations.

Components of the Notice of Denial, Proposed Suspension or Revocation of Certification:

1. A description of each of the violations.
2. The facts upon which the notice is based and the relevant sections of the organic standards that are in violation.
3. The effective date of the Denial of Certification.
4. The effective date of the Suspension or Revocation of Certification if the certified operation fails to respond.
5. Notification that if the certified operation does not request mediation or file an appeal that a Final Order of Denial, Suspension or Revocation will occur.
6. Opportunity to Request Mediation.
7. Opportunity to Appeal the Denial, Proposed Suspension or Revocation.
8. Mediation Criteria
9. Mediation Agreement Form
10. Request for Hearing form

Failure to respond

If the operation fails to respond to the Notice of Denial of Certification, Notice of Proposed Suspension of Certification, or Notice of Proposed Revocation of Certification, the WSDA Organic Food Program will notify the certified operation that their certification has been denied, suspended or revoked, as applicable.

Mediation

An applicant for certification or a certified operation has a right to request mediation if they have received a Notice of Denial of Certification or a Proposed Suspension or Revocation of Certification. Requests for mediation must be received within 30 days of the date of the written notification to the applicant for certification or certified operation.

Mediation is a voluntary negotiation process in which the parties to a dispute attempt in good faith to come to a mutual agreement with the assistance of an impartial facilitator. A mediator does not act as an advocate, attorney, or judge.

Upon receipt of the request for mediation, the program manager or his/her designee shall:

1. Review the request for mediation to determine whether the matter in dispute is amenable to a mediation process.
2. If the matter is amenable to a mediation process, the program manager will provide a Mediation Agreement form to the applicant for certification or certified operation.
3. The costs of providing mediation will be paid by the applicant for certification or certified operation.

Within 30 days the applicant for certification or certified operation who has requested mediation must make payment arrangements with a qualified mediator mutually agreed upon by the parties to the mediation. Failure to make payment arrangements within 30 days will constitute a rejection of mediation.

Upon rejection of mediation the applicant for certification or certified operation will be notified of the right to request an appeal within 30 days of the date of the written notification of rejection of the request for mediation.

Mediation privileged

The proceeding of any mediation shall not be reported or recorded in any manner, except for agreements that may be reached by the parties during the course of the conference. Statements made by or to the mediator, or by or to any part or other participant in the mediation, may not later be introduced as evidence. No party shall be bound by anything done or said during mediation unless an agreement is reached.

Exceptions to confidentiality may apply when disclosure is required by law, including physical threats to a person made in the course of mediation or information brought up in mediation regarding previously unreported abuse of a minor, elder or a person with a disability. If required by law, the mediator will report such information to the proper authorities.

If an agreement is reached, the agreement shall be reduced to writing and shall be binding upon all parties to that agreement. Any agreement reached during or as a result of the mediation process shall be in compliance with the Organic Food Production Act, the National Organic Standards, the IFOAM Basic Standards, EEC 2092/91, as applicable to the certification and notice. The Secretary of the United States Department of Agriculture may review any mediated agreement for conformity to the Organic Food Production Act and the National Organic Standards and may reject any agreement or provision not in conformance with those regulations.

Appeals Process

1. Applicants for certification and certified operations may appeal Notices of Denial, Proposed Suspension or Revocation of Certification.
2. Appeals for violations of the National Organic Program must be filed with the Administrator for the Agriculture Marketing Service, United States Department of Agriculture. The time
3. Appeals for violations of the European organic standards or other applicable organic standard will follow the due process of the Administrative Procedure Act, chapter 34.05 RCW.
4. A Final Order, Default Order or Settlement Agreement will be provided to the appellant at the conclusion of the appeals process.
5. All documents associated with the appeals process will be retained in a separate file by the Organic Program Secretary as per the PRO-OFP 034 Records Management

Denial, Suspension or Revocation

Once the Denial, Suspension or Revocation of Certification is finalized after an applicant for certification or certified operation exhausts all of their mediation and appeals rights a letter specifying the cancellation of their organic certification and the discontinued use of the organic certification logo.

Embargo Process

If organic food products are mislabeled, adulterated, or contaminated the Organic Food Program will place an embargo on those products under the authority of RCW 69.04.110 and in coordination with the WSDA Food Safety Program.

RCW 69.04.110 Embargo of articles. Whenever the director shall find, or shall have probable cause to believe, that an article subject to this chapter is in intrastate commerce in violation of this chapter, and that its embargo under this section is required to protect the consuming or purchasing public, due to its being adulterated or misbranded, or to otherwise protect the public from injury, or possible injury, he or she is hereby authorized to affix to such article a notice of its embargo and against its sale in intrastate commerce, without permission given under this chapter. But if, after such article has been so embargoed, the director shall find that such article does not involve a violation of this chapter, such embargo shall be forthwith removed. [1991 c 162 § 3; 1975 1st ex.s. c 7 § 25; 1945 c 257 § 29; Rem. Supp. 1945 § 6163-78.]

Distribution guidelines

All Notices of Denial of Certification, Notices of Noncompliance, Notices of Proposed Suspension or Revocation of Certification will be distributed as follows:

- Original sent via certified mail to the applicant or certified party.
- Copy sent via regular mail to the applicant or certified party.
- Copy for office file.
- Copy for compliance file (Organic Program Secretary)
- Copy for inspector's field file.

National Organic Program violations

- All notices regarding violations of the National Organic Standards will be copied and sent via regular mail to the National Organic Program Administrator.