



Instruction

Enforcement of the USDA Organic Regulations: Penalty Matrix

1. Purpose and Scope

This document provides instructions for taking enforcement action against certified operations that violate the U.S. Department of Agriculture (USDA) organic regulations. Its purpose is to promote consistent enforcement when evidence confirms that noncompliance has occurred. This instruction applies to all accredited certifying agents (“certifiers”).

2. Authority

The NOP accredits certifiers under the authority of the Organic Foods Production Act of 1990, as amended (OFPA; 7 U.S.C. §§ 6501 et seq.). Section 205.501(a)(3) of the USDA organic regulations requires certifiers to carry out the provisions of the OFPA and the USDA organic regulations, including issuing notices of noncompliances or proposed adverse actions to certified operations pursuant to 7 C.F.R. § 205.662. Certifiers must also comply with, implement, and carry out any terms and conditions determined by the Agricultural Marketing Service (AMS) Administrator to be necessary, including compliance actions consistent with this instruction (7 C.F.R. § 205.501(a)(21)).

3. Background

The NOP recognizes the importance of consistent responses to noncompliance with the USDA organic regulations across certifiers and certified operations. In 2003, the National Organic Standards Board recommended that the NOP provide written guidance to certifiers describing which classifications or types of violations constitute minor and major noncompliances, to help certifiers distinguish among the appropriate penalties and to increase consistency in enforcement. In response, the NOP published a “penalty matrix” in 2012 that described enforcement actions organized by regulatory citation. The certifier response to that matrix led the NOP to conclude that, although its intent was sound, the matrix was ultimately too complex and focused too heavily on recordkeeping. As such, the NOP archived its first penalty matrix, and developed the revised penalty matrix presented here.

4. The Penalty Matrix

The revised penalty matrix presents generally applicable criteria for determining the appropriate enforcement action when a certifier identifies a violation of the OFPA and/or USDA organic regulations. Importantly, these criteria can be applied to the violation of any of the USDA organic regulations, based on the characteristics of the specific violation. The NOP recognizes that there may be exceptional situations that require a response other than the one recommended. In general, however, certifiers are to respond to violations in a manner consistent with the



penalty matrix.

This penalty matrix is divided into four columns and one row. The columns represent the four general categories of possible enforcement responses by certifiers. The cell under each column lists the criteria for taking the action recommended in the column header, i.e., a description of the characteristics and scope of the violation. Explanation of each type of response follows.

4.1 Minor Issues – Conditions for New or Continued Certification

The first column of the penalty matrix addresses minor issues. These types of violations require correction, but do not preclude certification and do not necessitate a Notice of Noncompliance (NONC). The criteria in this column are repeated to distinguish between violations in practice and in recordkeeping.

Minor issues, whether found in operational practices or recordkeeping, indicate no systemic failure in the design or implementation of the organic system plan (OSP), i.e., they do not show an inability to comply with the USDA organic regulations. Certification can be granted or continued before correction, but correction must occur within a time period specified by the certifier. The USDA organic regulations specifically allow for citation of minor noncompliances in § 205.404, which states that upon granting certification, “the certification may include requirements for the correction of minor noncompliances within a specific time period as a condition of continued certification.”

Certification can be granted along with notification to the operation, typically a “minor issue letter,” describing the noncompliance. Certifiers are to require correction during a specific period that can be no later than prior to the next inspection or annual update. The certifier must keep written records of the issues identified and their correction. Certifiers do not have to notify the NOP about minor issues.

4.2 Notices of Noncompliance (NONC)

The second column of the penalty matrix addresses violations that warrant the issuance of a NONC. As with the “Minor Issues” criteria, the criteria in the column for these violations are repeated to distinguish between violations in practice and in recordkeeping.

Like violations treated as minor issues, violations that warrant a NONC do not indicate a systemic failure in OSP design or implementation, and therefore do not indicate that an operation is otherwise unable to produce or handle agricultural products in compliance with the USDA organic regulations. Violations that fall into this category are correctable and a certifier is to allow time for their correction, per § 205.662(a)(3) of the regulations. If a violation cannot be corrected, the certifier must issue a combined NONC and Notice of Proposed Suspension or Revocation, per § 205.662(c) of the regulations.

Violations that warrant a NONC are more significant than minor issues. They are serious or complex enough to require an approved corrective action plan and the certifier is to verify the



implementation of the approved plan. Failure to correct (or successfully rebut) these violations in a prescribed time period indicates that an operation is unable or unwilling to comply with the USDA organic regulations. Failure to correct (or successfully rebut) violations cited in a NONC may result in a Notice of Proposed Suspension or, if the NONC was issued as part of an application review, a denial of certification. Also, unlike a minor issue, if a NONC is issued as part of the application process for certification, the operation must resolve the noncompliance before certification is granted.

4.3 Major Noncompliance – Denial or Proposed Suspension of Certification

The third column of the penalty matrix addresses violations that warrant a Notice of Proposed Suspension (NOPS) or, to applicants for organic certification, a denial of certification. We address these types of violations in the order they appear on the penalty matrix. Also, as in the matrix, we distinguish between situations warranting a Proposed Suspension and those warranting a Combined Notice of Noncompliance and Proposed Suspension.

4.3.1 Proposed Suspension

The most common reason for a NOPS is a failure by an operation to successfully rebut or correct violation(s) identified in a NONC within a prescribed time period (see 3(a) on the penalty matrix). Failure to adequately respond to a NONC may result in a denial of certification or a NOPS. Certifiers must comply with the regulations at § 205.405(c)(ii) or § 205.662(c) when denying certification or issuing a NOPS in these cases.

4.3.2 Combined Notice of Noncompliance and Proposed Suspension

7 C.F.R. § 205.662(c) allows certifiers to issue a combined Notice of Noncompliance and Proposed Suspension, without having previously issued a NONC, when an identified noncompliance is *uncorrectable*. Some violations indicate the systemic failure of an operation's OSP, either in design or implementation, showing that an operation is unable to comply with the USDA organic regulations. Such violations are considered uncorrectable. Systemic failure could be evidenced by multiple violations, indicating that an operation's OSP does not meet the requirements of § 205.201, either in design or in practice. Serious OSP design problems should be identified during the review of an application for certification, per the regulations at § 205.402(a)(2).

The accidental application of prohibited substances to land also is considered an uncorrectable noncompliance and should result in a denial of certification or a combined Notice of Noncompliance and Proposed Suspension. Portions of land must be suspended as warranted. For example, the accidental application of a prohibited substance to only part of an operation's land could result only in the suspension of the affected land, if it can be shown that the application was not willful. Land to which prohibited substances have been applied must be suspended from organic operation for three years, pursuant to § 205.202 of the regulations.

Section 205.662(d) of the regulations also provide for the issuance of a NOPS alone in response



to a willful violation, but willful violations should most often, if not always, result in a Notice of Proposed Revocation.

4.4 Major Noncompliance – Denial or Proposed Revocation of Certification

The fourth category of enforcement concerns denial of certification and Notice of Proposed Revocation (NOPR) in response to willful violation of the USDA organic regulations. Section 2120 of the OFPA (see 7 U.S.C. 6519(c)) provides for five years of certification ineligibility in response to “knowing” violations. Accordingly, an NOPR is appropriate when sufficient evidence exists to show that an operation deliberately violated the USDA organic regulations.

As stated in the penalty matrix, willful violation involves the deliberate sale, labeling or representation of agricultural products as organic in violation of the regulations. The products in question could be conventional products misrepresented as organically produced, or products produced by a certified operation knowingly in violation of the USDA organic regulations. Evidence that such violations were committed willfully or knowingly is obviously very important in these cases and certifiers should not propose revocation unless they have such evidence.

Specific types of noncompliance that merit an NOPR follow:

- The deliberate application of prohibited substances to land or product, as well as the deliberate use of practices prohibited by the regulations.
- Falsification or concealment of records from the certifier or its inspectors. The OFPA provides for a five year revocation of certification for making false statements at 7 U.S.C. 6519(c)(1)(A).
- Refusal by an operation to provide access to facilities for inspection or access to records. Section 205.400 of the regulations mandates access to facilities for onsite inspection and access to records for review. Refusal of such access constitutes a willful violation.
- Continuing violation of the regulations following a suspension of certification. These violations often will be selling, labeling or representing agricultural products after certification is suspended. Since the operation was previously certified, such violations are considered knowing and willful.

As stated above, certifiers should notify the NOP when evidence shows that an operation has knowingly sold, labeled or represented agricultural products in violation of the USDA organic regulations, as civil penalties or other enforcement responses may be appropriate. Similarly, certifiers should notify the NOP when evidence shows that an operation has made false statements or concealed records.

5. Mediation and Appeals

When a certifier proposes to suspend or revoke an operation’s certification, it must provide the



operation with the right to request mediation, pursuant to §§ 205.662(c)(4) and 205.662(e)(2) of the regulations. The goal of the mediation process is to engage in alternative dispute resolution to lead to a settlement agreement between the operator and the certifier. The certifier may accept or reject the mediation request. Any settlement agreement agreed to by the operation and certifier must comply with the OFPA and the organic regulations, and must be completed within 30 days of the mediation session held to lead to that agreement. If a certifier rejects a mediation request, the operation has 30 days to appeal the initial adverse action. If mediation is attempted, but no agreement is reached, the operation has 30 days from the end of the mediation session to file an appeal of the initial adverse action.

An applicant for certification may appeal a certifier's notice of denial of certification. Any certified operation may appeal a certifier's NOPS or NOPR. When the applicant or certified operation is subject to an approved State Organic Program (SOP), the appeal must be made to the SOP. Appeals from operations not operating in a SOP are made to the AMS Administrator. Appeals may be dismissed, settled, closed, sustained or denied.

If an appeal is denied, a formal administrative proceeding is initiated to deny, suspend, or revoke the certification. Such a proceeding shall be pursuant to the USDA Uniform Rules of Practice or the SOP's rules of procedures.

Certified operations remain certified and must comply with all USDA organic regulations throughout the mediation and appeals process; this includes any hearing period if an appeal is denied and a formal proceeding occurs. Certifiers are responsible for continuing certification services during the appeals process.

6. References

Organic Foods Productions Act of 1990, as amended

7 U.S.C. 6519 Violations of Title

USDA Organic Regulations ([7 CFR Part 205](#))

7 C.F.R. § 205.201 Organic production and handling system plan.

7 C.F.R. § 205.202 Land requirements.

7 C.F.R. § 205.400 General requirements for certification.

7 C.F.R. § 205.402 Review of application.

7 C.F.R. § 205.404 Granting certification.

7 C.F.R. § 205.405 Denial of certification.

7 C.F.R. § 205.501 General requirements for accreditation.



7 C.F.R. § 205.662 Noncompliance procedure for certified operations.

NOP Program Handbook: Guidance and Instructions for Accredited Certifying Agents and Certified Operations

NOP 2612 Recommended Penalties for Violations of Specific Regulatory Requirements (archived)

NOP 2612-1 Penalty Matrix Instructions by Violation Category (archived)

NOP 4011 Adverse Action Appeal Process

Approved on January 20, 2015



Penalty Matrix

	Minor Issues – Conditions for New or Continued Certification	Notice of Noncompliance (NONC)	Major Noncompliances – Denial or Proposed Suspension of Certification	Major Noncompliances – Denial or Proposed Revocation of Certification
Violation	<ul style="list-style-type: none"> ➤ Noncompliant practices that: <ul style="list-style-type: none"> • Indicate no systemic failure¹ in OSP design or implementation <i>and</i>; • Can be easily corrected without the need for a corrective action plan.² ➤ Minor inconsistencies or omissions in records that: <ul style="list-style-type: none"> • Indicate no systemic failure in OSP design or implementation <i>and</i>; • Can be easily corrected without the need for a corrective action plan. 	<ul style="list-style-type: none"> ➤ Noncompliant practices that: <ul style="list-style-type: none"> • Indicate no systemic failure in OSP design or implementation <i>but</i>; • Are significant enough in nature or in scope to require a corrective action plan to ensure and verify compliance. ➤ Inconsistencies or omissions in records that: <ul style="list-style-type: none"> • Indicate no systemic failure in OSP design or implementation <i>but</i>; • Are significant enough in nature or in scope to require a corrective action plan to ensure and verify compliance. 	<p><i>Proposed Suspension</i></p> <ul style="list-style-type: none"> ➤ Failure to resolve, successfully or within a prescribed time period, a previously issued noncompliance. <p><i>Combined Notice of Noncompliance and Proposed Suspension</i></p> <ul style="list-style-type: none"> ➤ Systemic failure of OSP design or implementation that demonstrates inability to comply with the regulations. ➤ Accidental or otherwise un-willful application of a prohibited substance to land.³ 	<ul style="list-style-type: none"> ➤ Deliberate violation of the regulations, including: <ul style="list-style-type: none"> • Willful sale, labeling or representation of conventional agricultural products as organic; • Willful sale, labeling or representation of agricultural products as organic in violation of the regulations; • Willful application of prohibited substances or use of prohibited practices. ➤ Falsification or concealment of records. ➤ Refusal to provide access to a unit, facility or site for inspection⁴ or access to records applicable to organic operation. ➤ Continuing noncompliance with the regulations following a proposed suspension.

¹ A “systemic failure” would be one or more violations that show an operation is unable to comply with the OFPA and the USDA organic regulations.

² Although a minor noncompliance in this category would not require a corrective action plan by the operation, the certifier must maintain records of all cited minor noncompliances and their correction.

³ Discrete tracts of land or areas, affected by the application, may be suspended.

⁴ Pursuant to 7 C.F.R. § 205.400(c), access for onsite inspection of an organic operation must include access to noncertified production and handling areas, structures and offices.