



Instruction

Follow-up Monitoring of Compliance with National Organic Program Enforcement Actions

1. Purpose

This instruction establishes the National Organic Program (NOP) policy and procedure for conducting follow-up monitoring of enforcement actions.

2. Scope

This procedure applies to NOP and all accredited certifying agents.

3. Background

The (NOP) was established as a result of the Organic Foods Production Act of 1990 (OFPA; 7 USC 6501 et seq.). The NOP develops, implements, and administers national production, handling, and labeling standards for organic agricultural products. It accredits certifying agents (foreign and domestic) who inspect organic production and handling operations to certify that they meet United States Department of Agriculture (USDA) standards. It enforces organic production, handling, and labeling standards.

In carrying out its mission, the NOP and its accredited certifying agents take a variety of actions to enforce compliance with the OFPA and its related regulations. These actions result in compliance through correction of non-compliances, cease-and-desist of violating practices, denial, or suspension/revocation of certification. To ensure continued compliance and prevent relapse, it is important and necessary for the program to conduct routine follow-up monitoring of enforcement actions subsequent to their implementation.

4. Policy

4.1 General

For enforcement actions that require follow-up monitoring, the NOP will conduct monitoring activities on a regular basis. At least one compliance monitoring will be conducted during the one-year period from the date of the final action. Further monitoring during subsequent years may be warranted on a case-by-case basis or when resources allow.

NOP enforcement actions include the following:

1. Notice of Noncompliance
2. Notice of Denial
3. Notice of Proposed Suspension or Revocation
4. Notice of Suspension or Revocation



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5. Consent Decree or Settlement Agreement
 6. Cease-and-desist Letter (only sent by the USDA NOP to uncertified operations)
 7. Civil Penalty

4.2 Applicability

This policy applies to enforcement actions that, by their nature, need follow-up monitoring. Generally speaking, these are final actions that close complaints, or cease or deny certification. The policy is not applicable to enforcement actions that are (1) monitored through the normal process of certification or accreditation (e.g. Notice of Noncompliance); (2) intermediate actions that are not effective until further actions (Notice of Proposed Suspension or Revocation); and (3) one-time executed events (Civil Penalty).

It is the responsibility of accredited certifying agents to verify implementation of corrective actions through unannounced and/or annual inspections. Specifically, the following actions require follow-up monitoring:

1. Notice of Suspension or Revocation
2. Consent Decree or Settlement Agreement
3. Cease-and-desist Letter

4.3 OFPA Enforcement Roles and Responsibilities

Enforcement of the OFPA and its related regulations is jointly carried out by the NOP and the certifying agents. Many enforcement actions are separately taken and completed by the NOP or the certifying agents. Some actions may initiate from one party and end with the other.

1. The NOP Roles and Responsibilities

Within the NOP, enforcement actions are mainly initiated by the Compliance & Enforcement Division (C&E) as a result of complaint investigations and appeal decisions. The C&E handles all NOP complaints. Based on its investigations and where appropriate, the C&E takes enforcement actions to resolve the complaints. The C&E also initiates enforcement actions to implement appeal decisions that involve suspending or revoking an entity.

2. Accredited Certifying Agents Roles and Responsibilities

During certification activities and complaint investigation, certifying agents identify violations and take various enforcement actions, culminating in the issuance of notices of denial, proposed suspension or revocation. Generally, two scenarios follow such notices:

- a. Entities do not appeal – certifying agents issue notices of suspension or revocation.
- b. Entities appeal to the USDA - The NOP implements final actions based on appeal decisions.



5. Procedure

5.1 NOP's Follow-up Monitoring Procedures

1. Complaints closed with cease-and-desist letters:
The NOP will conduct randomized, sample monitoring of entities that receive cease-and-desist letters. The review will be conducted during the six-month period following the end of the previous fiscal year. The review sample will constitute 5% of the total relevant cases closed during the previous fiscal year.
2. Entities suspended or revoked (including cases closed with consent decrees or settlement agreements):
The NOP will conduct randomized, sample monitoring of all operations suspended or revoked from certification. The monitoring activities will be conducted during the six-month period following the end of the previous fiscal year. The review sample will constitute 5% of the total suspended and revoked entities.

For each monitoring activity, a C&E Compliance Specialist will conduct investigative activities to evaluate compliance with NOP regulations. When the investigation indicates non-compliances, the NOP may take additional enforcement actions, including levying civil penalties.

5.2 Guidelines for accredited certifying agents.

1. § 205.501(a)(15) requires the certifying agents to submit a copy of:
 - a. Any notice of denial certification issued pursuant to § 205.405, notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation sent pursuant to § 205.662 simultaneous with its issuance.
2. The NOP will utilize the § 205.501(a)(15)(i) submissions to establish the total number of suspended and revoked entities.
3. Certifying agents should submit relevant documents, simultaneous to their issuance, to NOPACAAverseActions@ams.usda.gov.

6. References

Organic Foods Productions Act (1990 as amended)

7 U.S.C. Sec.6510, Requirements of Certifying Agents

7 U.S.C. Sec.6519, Violations of Title

NOP Regulations (as amended to date)

7 CFR § 205.405 Denial of certification.

7 CFR § 205.501 General requirements for accreditation.



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- (a) A private or governmental entity accredited as a certifying agent under this subpart must:....
- (15) Submit to the Administrator a copy of:
- (i) Any notice of denial of certification...

Approved on July 22, 2011