

Review of Procedures for Issuance of a Notice of Noncompliance and Adverse Action Notices



LESSON OBJECTIVES:

- REVIEW OF THE NECESSARY COMPONENTS OF A NOTICE OF NONCOMPLIANCE
- REVIEW OF THE NECESSARY COMPONENTS OF ADVERSE ACTION NOTICES

What's wrong with this NONC?

NOTICE OF NON COMPLIANCE

November 16, 2011

Sent via: Email with return receipt acknowledgement

XXX XXXXXXXX

St. Peter, Minnesota 56082

Dear Mr. **XXXXX**

Our records indicate that your operation is no longer compliant with NOP 7CFR Part 205.406(a)(ii)(3)(4) for the following reason(s):

You have not submitted a complete response to deficiencies identified during the last inspection. On September 27, 2011 **XXX** issued you a **Noncompliance letter** requiring you to respond within 30 days, as of today, we have not received a complete response from you regarding this request.

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See 205.662(c)

When **rebuttal is unsuccessful** or correction of the noncompliance is not completed within the prescribed time period, **the certifying agent or State organic program's governing State official shall send the certified operation a written notification of proposed suspension or revocation of certification**

Under the National Organic Program once certification is granted it continues in effect unless voluntarily surrendered, suspended or revoked.

If we do not hear from you by November 30, 2011 (14 days), we will propose to the USDA's National Organic Program that your certification should be suspended.

If you wish to voluntarily surrender your certification, we ask that you sign and return the acknowledgement below so that we may have written confirmation of your account status.

Please contact your **XXX** Certification Project Manager, **XXXX XXXX** if you have any questions regarding this noncompliance.



Summary of key issues of a NONC

- Notice of Noncompliance
 - Describes the noncompliance(s)
 - Identifies the facts
 - Cites to specific regulation(s)
 - Provides the date the noncompliance(s) have to be corrected
 - States the recourse if not corrected

... Additional Components of the NONC

- The ACA's company name, address, telephone number on the letterhead or footer.
- THE DATE
- THE "SUBJECT" OR "HEADER" at the beginning of the letter, clearly labeling the document as "NOTICE OF NONCOMPLIANCE."
- If there is more than one noncompliance , please designate them separately.
- If the Notice requires the operator to submit documentation then the notice must clearly state what documentation /information is needed and when it must be submitted (due date).
- Printed name and signature of the agent representative signing the letter.

What's wrong with this Proposed Suspension?

11/15/2011

NOTICE OF PROPOSED SUSPENSION:

Rancho **XXXX**

XXXX XXXXXX

XXX XXXX – XXXXX XX XXXXX Km 8

Dear **XXXX XXXXX**,

This letter concerns your certification status with **XXXXXX XXXX**.

XXXXXX XXXX sent notification of non-compliance on 10/18/2011 with options in order to resolve the noncompliance, as of this date **XXXXXX XXXX** has not received resolution to this noncompliance. If **XXXXXX XXXX** does not receive a response, as described below, within 30 days from receipt of this letter, then your certification will be suspended (no products can then be represented or sold as organic) and will remove **XXXXXX XXXX** your operation from our database of currently certified operations.

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In response to this notification you may:

1. File a request for mediation to **XXXXXXX XXXX** as per §205.663 of the NOP Final Rule.
2. File an appeal to the USDA as described in the NOP Final Rule Section §205.681. Appeals should be sent to: Administrator, USDA, AMS c/o NOP Appeals Team, STOP 0203, Room 2095-S, 1400 Independence Ave. SW, Washington, DC 20250. For more information on filing an appeal please visit the NOP website.

If suspension occurs, you may request reinstatement of certification by submitting the renewal application. As provided for in 205.662(f) of the NOP Final Rule, reinstatement of certification is subject to review by the USDA Secretary of Agriculture. Please note the application is not considered to be received and complete if it is not accompanied by payment.

This notice is in violation of 205.662(c)(1)-by not stating the reasons for the proposed suspension or revocation.

Components of Proposed Suspension

Used when a noncompliance is possible to correct; and
A Notice of Proposed Suspension is issued it must include:

- The reasons for the suspension
- The proposed effective date and length of suspension
- The impact of the suspension
- The right to request mediation or file an appeal
- Appeal information: deadline (30 days), address, etc.

... **Additional Components of the Notice of Proposed Suspension**

- The ACA's company name, address, telephone number on the letterhead or footer
- THE DATE
- THE "SUBJECT" OR "HEADER" at the beginning of the letter, clearly labeling the document as "NOTICE OF PROPOSED SUSPENSION."
- If the Notice requires the operator to submit documentation/information, then the notice must clearly state what documentation /information is needed and when it must be submitted (due date).
- Printed name and signature of the agent representative signing the letter



Other Adverse Action Notices

- Proposed revocation
- Suspension notice
- Revocation notice
- Combined notice of noncompliance and proposed suspension or revocation
- Combined notice of noncompliance and denial of certification
- Denial of Certification

Combined Notices

- Only used when there is evidence of willful and or major violation(s);
- Should consult with NOP for possible civil penalties first!
- Should not be used as a threat to goad compliance;
- Once issued, the recipient has limited options.

Notice of Proposed Revocation

Used when there is willful/major violation(s) and/or noncompliance is not possible to correct-

- The reasons for the revocation – (the reasons for the determination that the action was willful/major)
- The proposed effective date
- The impact of the revocation
- The right to request mediation or file an appeal
- Appeal information: deadline (30 days), USDA address, etc.

Denial of Certification

- Describes the reason for the denial of certification
- Identify the facts
- Cites to specific regulations
- States the impact for future certification
- Offers the right to request mediation or file an appeal

Other related considerations to include in notices-

- All Notices must be accurate
 - The regulations cited must be correct
 - Lab results cited must be accurate and match lab documentation
 - Information (including dates/names) from inspector's reports or other documentation must be accurate
 - Time-frame dates must be accurate

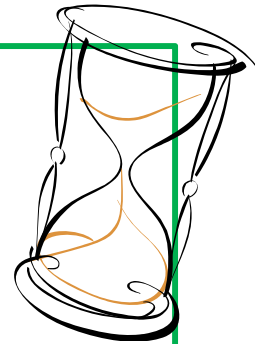
Other related considerations to include-



- Attachments:
 - If attachments are to be included, note specifically within the letter. (example: “the laboratory results for the water samples are attached.”)
 - If there are multiple attachments included, number them within the letter.

Other related considerations to include-

- Time frame for appeals:
 - Within the regulations there are specific time frames
 - §205.663 **Mediation:**
 - If mediation is rejected the operator has the right to appeal “within 30 days of the date of the written notification of rejection of the request for mediation.”
 - “If mediation is unsuccessful, the applicant [operation] shall have 30 days from termination of mediation to appeal.”



• How to Calculate the Proposed Effective Date of Suspension or Revocation . . .

- The Notice of Proposed Suspension notifies the operation that the proposed effective date for suspension, will occur on a prescribed date.
- The proposed effective date of suspension, can be calculated by adding 40 days to the date stated on the Notice of Proposed Suspension.
- Allowing 40 days, (from the date of the actual Notice of Proposed Suspension, Proposed Revocation or Denial), when calculating the proposed effective date, will account for
 - time for the notice to reach the certified operation by registered or certified mail and,
 - the full 30 days for the operation to appeal and,
 - will give approximately 5-10 days for the USDA NOP Appeals Team to receive the appeal, if the operator chooses to file.

Other related considerations to include-

- Notices of Proposed Suspension state the proposed length of suspension,
(e.g. 1 month, 6 months, 1 year, 2 years, etc.)
- Notice of Suspension- state the length of suspension,
(e.g. 1 month, 6 months, 1 year, 2 years, etc.)

Other related considerations to include-



- Notice of Proposed Revocation- state the proposed length which is always 5 years!
- Notice of Revocation- state the length of revocation is for 5 years

Review

- **Major mistakes made when issuing notices:**
 - NONC and Proposed Suspension/Revocation fail to state the reason for the notice and cite to the appropriate regulation that has been violated.
 - Notice of Revocation or Combined Notices are issued to operations when corrective action is still possible.
 - NONC fail to list due date for corrective action or rebuttal.
 - No title or an incorrect title is placed on the notice(s).
 - Insufficient appeal or mediation information is given.

QUESTIONS



Jan 2012

