



NOP Instruction 2612: Recommended Penalties for Violations of Specific Regulatory Requirements

January 15, 2013

ACA Training – Orlando, FL

USDA Agricultural Marketing Service

National Organic Program



Today's Training Objectives



- Describe the Penalty Matrix instruction
- Discuss how to use the Penalty Matrix
- Use hands-on practice scenarios to apply the Penalty Matrix

Training Session Road Map



- The Development History and Purpose of the Penalty Matrix
- The Penalty Matrix Life Cycle
- The Format of the Penalty Matrix
- How to Use the Penalty Matrix
- Working with the Penalty Matrix: Case scenarios group exercise

Penalty Matrix Development History



- October 2003: NOSB Certification, Accreditation, and Compliance Committee prepared a draft Penalty Matrix
- Certifying agents consistently ask for more guidance about recommended penalties for violation classes and categories
- NOP accreditation audits and appeals found inconsistency in how certifiers identify noncompliances and take adverse actions
 - Some certifiers moving to combined notices/revocation when findings do not warrant
 - Some certifiers not issuing NONCs when they should
 - Some auditors thought that all findings led to a noncompliance

Penalty Matrix Purpose



- Clarify that NONCs do not need to be issued for minor issues/conditions for continued certification
 - Supports concept of continual improvement
- Help certifying agents distinguish between minor issues and noncompliances
- Increase consistency in the penalties issued for violations of the USDA organic regulations
- Help distinguish between conditions that lead to suspension versus revocation.

Penalty Matrix Life Cycle



- Instructions were utilized because the target audience are accredited certifiers, and instructions are more easily revised than guidance documents
- NOP Instruction 2612 was released on September 20, 2012
 - **Purpose is to help certifying agents and the NOP be more consistent, and**
 - **Supports continual improvement and progressive corrective action**

Penalty Matrix Life Cycle



- Penalty Matrix 2612-1 is under review and will be revised later this year
- Input from certifiers is requested
- Please send your input to your accreditation manager

Matrix Format



- Five sections that correspond to regulatory sections:
 - (1) general;
 - (2) crops;
 - (3) livestock production;
 - (4) handling; and
 - (5) labeling.

Matrix Format



- Six columns help describe how serious a specific violation is:
 - (1) CFR citation;
 - (2) paraphrased regulatory requirements;
 - (3) minor issues – conditions for continued certification;
 - (4) noncompliance – Notice of Noncompliance (NONC)– denial of initial certification;
 - (5) major noncompliance – denial or proposed suspension of certification; and
 - (6) major noncompliance – denial or proposed revocation of certification.

Penalty Matrix for Violations of the USDA Organic Regulations

General Standards	Summary of Provision	Minor Issues – Conditions for Continued Certification	Noncompliances – Notice of Noncompliance - Denial of Initial Certification	Major Noncompliances – Denial or Proposed Suspension of Certification	Major Noncompliances – Denial or Proposed Revocation of Certification
205.200 General					
205.200 General	Must comply with applicable provisions of the NOP regulations.	Operation is generally in compliance, but some aspect of the OSP or recordkeeping system is incomplete or poorly organized.	Some required element of the OSP is missing. Operation is not in compliance with some aspect of the regulations.	Failure to follow OSP. Failure to respond to prior notice of noncompliance. Inadvertent violation of regulations resulting in noncompliant product being sold as organic. One year suspension.	Willful violation of regulations. Fraudulent concealment of violations. Willful sale or labeling of noncompliant products as organic.
205.200 General	Production practices must maintain or improve the natural resources of the operation, including soil and water quality.	Records do not clearly demonstrate that natural resources are maintained or	OSP does not directly address the requirement to maintain or improve	Failure to follow OSP, resulting in a degradation of the quality of natural	Falsification of documents to conceal degradation of soil and water

Violation Categories Explained



- Minor Issue – Conditions for Continued Certification
 - Requires time-specified correction
 - Does not preclude certification
 - Does not require reporting to the NOP Appeals Team
 - Focus is on progressive corrective action and continuous improvement
 - Examples: lack of organized records; minor paperwork errors

Penalty Matrix for Violations of the USDA Organic Regulations

General Standards	Summary of Provision	Minor Issues – Conditions for Continued Certification	Noncompliances – Notice of Noncompliance - Denial of Initial Certification	Major Noncompliances – Denial or Proposed Suspension of Certification	Major Noncompliances – Denial or Proposed Revocation of Certification
205.200 General					
205.200 General	Must comply with applicable provisions of the NOP regulations.	Operation is generally in compliance, but some aspect of the OSP or recordkeeping system is incomplete or poorly organized.	Some required element of the OSP is missing. Operation is not in compliance with some aspect of the regulations.	Failure to follow OSP. Failure to respond to prior notice of noncompliance. Inadvertent violation of regulations resulting in noncompliant product being sold as organic. One year suspension.	Willful violation of regulations. Fraudulent concealment of violations. Willful sale or labeling of noncompliant products as organic.
205.200	the soil and water quality.	Records do not clearly demonstrate that natural resources are maintained or	OSP does not directly address the requirement to maintain or improve	Failure to follow OSP, resulting in a degradation of the quality of natural	Falsification of documents to conceal degradation of soil and water

Minor issues – Conditions for Continued Certification

Violation Categories Explained



- Noncompliance – Notice of Noncompliance (NONC) – Denial of Initial Certification
 - Violation is correctable
 - Applicant for certification: violation requires corrective action *before* issuance of certification
 - Certified operation: violation requires
 - Time-specified corrective action
 - Issuance of NONC
 - Reporting to NOP Appeals Team
 - Examples: use of nonorganic seed without determining commercial availability of organic seed; failure to submit formula and label for review prior to sale

Penalty Matrix for Violations of the USDA Organic Regulations

General Standards	Summary of Provision	Minor Issues – Conditions for Continued Certification	Noncompliances – Notice of Noncompliance - Denial of Initial Certification	Major Noncompliances – Denial or Proposed Suspension of Certification	Major Noncompliances – Denial or Proposed Revocation of Certification
205.200 General					
205.200 General	Must comply with applicable provisions of the NOP regulations.	Operations are in compliance, but some aspect of the operation is not fully completed or organized.	Some required element of the OSP is missing. Operation is not in compliance with some aspect of the regulations.	Failure to follow OSP. Failure to respond to prior notice of noncompliance. Inadvertent violation of regulations resulting in noncompliant product being sold as organic. One year suspension.	Willful violation of regulations. Fraudulent concealment of violations. Willful sale or labeling of noncompliant products as organic.
205.200 General	Production of natural water quality.	Water resources are maintained or improved.	OSP does not directly address the requirement to maintain or improve water resources.	Failure to follow OSP, resulting in a degradation of the quality of natural resources.	Falsification of documents to conceal degradation of soil and water.

Notice of
Noncompliance—
Denial of
Certification

Violation Categories Explained



- Major Noncompliance – Denial or Proposed Suspension of Certification
 - Violation affects integrity of organic system or product (violation is not correctable)
 - Applicant for certification: Issuance of combined NONC and Notice of Denial
 - Certified operation: violation requires:
 - Issuance of combined NONC and Notice of Proposed Suspension
 - Reporting to NOP Appeals Team
 - Examples: application of prohibited substance; use of conventional ingredient instead of organic
- NOTE: Failure to resolve previous noncompliance also results in Notice of Proposed Suspension

Penalty Matrix for Violations of the USDA Organic Regulations

General Standards	Summary of Provision	Minor Issues – Conditions for Continued Certification	Noncompliances – Notice of Noncompliance - Denial of Initial Certification	Major Noncompliances – Denial or Proposed Suspension of Certification	Major Noncompliances – Denial or Proposed Revocation of Certification
205.200 General					
205.200 General	Must comply with applicable provisions of the NOP regulations.	Operation is generally in compliance, but some aspects are not in compliance with the requirements of the OSP.	Operation is not in compliance with the requirements of the OSP.	Failure to follow OSP. Failure to respond to prior notice of noncompliance. Inadvertent violation of regulations resulting in noncompliant product being sold as organic. One year suspension.	Willful violation of regulations. Fraudulent concealment of violations. Willful sale or labeling of noncompliant products as organic.
205.200 General	Production practices must protect and enhance the natural resources of the operation and water quality.	that natural resources are maintained or improved.	requirement to maintain or improve	Failure to follow OSP, resulting in a degradation of the quality of natural resources.	Falsification of documents to conceal degradation of soil and water

Denial or Proposed Suspension of Certification

Violation Categories Explained



- Major Noncompliance – Denial or Proposed Revocation of Certification
 - Violation is egregious and willful, and may include fraud and/or falsification of records
 - Applicant for certification: Issuance of combined NONC and Notice of Denial
 - Certified operation: violation requires:
 - Issuance of combined NONC and Notice of Proposed Revocation
 - Reporting to NOP Appeals Team and NOP for possible civil penalties
 - Examples: knowingly using prohibited substances; willful sale of conventional products as organic

Penalty Matrix for Violations of the USDA Organic Regulations

General Standards	Summary of Provision	Minor Issues – Conditions for Continued Certification	Noncompliances – Notice of Noncompliance - Denial of Initial Certification	Major Noncompliances – Denial or Proposed Suspension of Certification	Major Noncompliances – Denial or Proposed Revocation of Certification
205.200 General					
205.200 General	Must comply with applicable provisions of the NOP regulations.	Operation is generally in compliance, but	Some required element of the is missing	to follow are to respond to	Willful violation of regulations. Fraudulent concealment of violations. Willful sale or labeling of noncompliant products as organic.
205.200 General	Production practices must maintain or improve the natural resources of the operation, including soil and water quality.	clearly demonstrate that natural resources are maintained or	directly address the requirement to maintain or improve	OSP, resulting in a degradation of the quality of natural	Falsification of documents to conceal degradation of soil and water

Denial or Proposed Revocation of Certification

Penalty Matrix for Violations of the USDA Organic Regulations

General Standards	Summary of Provision	Minor Issues – Conditions for Continued Certification	Noncompliances – Notice of Noncompliance - Denial of Initial Certification	Major Noncompliances – Denial or Proposed Suspension of Certification	Major Noncompliances – Denial or Proposed Revocation of Certification
205.200 General					
205.200 General	Must comply with applicable provisions of the NOP regulations.	Operation is generally in compliance, but some aspect of the OSP or recordkeeping system is incomplete or poorly organized.	Some required element of the OSP is missing. Operation is not in compliance with some aspect of the regulations.	Failure to follow OSP. Failure to respond to prior notice of noncompliance. Inadvertent violation of regulations resulting in noncompliant product being sold as organic. One year suspension.	Willful violation of regulations. Fraudulent concealment of violations. Willful sale or labeling of noncompliant products as organic.
205.2		Records do not clearly demonstrate that natural resources are maintained or	OSP does not directly address the requirement to maintain or improve	Failure to follow OSP, resulting in a degradation of the quality of natural	Falsification of documents to conceal degradation of soil and water

Separate tabs correspond with regulatory sections

Penalty Matrix for Violations of the USDA Organic Regulations

Side rows list
specific regulatory
citations

General Standards		Noncompliances – Notice of Noncompliance - Denial of Initial Certification	Major Noncompliances – Denial or Proposed Suspension of Certification	Major Noncompliances – Denial or Proposed Revocation of Certification	
205.200 General					
205.200 General	Must comply with applicable provisions of the NOP regulations.	Operation is generally in compliance, but some aspect of the OSP or recordkeeping system is incomplete or poorly organized.	Some required element of the OSP is missing. Operation is not in compliance with some aspect of the regulations.	Failure to follow OSP. Failure to respond to prior notice of noncompliance. Inadvertent violation of regulations resulting in noncompliant product being sold as organic. One year suspension.	Willful violation of regulations. Fraudulent concealment of violations. Willful sale or labeling of noncompliant products as organic.
205.200 General	Production practices must maintain or improve the natural resources of the operation, including soil and water quality.	Records do not clearly demonstrate that natural resources are maintained or	OSP does not directly address the requirement to maintain or improve	Failure to follow OSP, resulting in a degradation of the quality of natural	Falsification of documents to conceal degradation of soil and water

Penalty Matrix for Violations of the USDA Organic Regulations

General Standards	Summary of Provision	Minor Issues – Conditions for Continued Certification	Noncompliances – Notice of Noncompliance - Denial of Initial Certification	Major Noncompliances – Denial or Proposed Suspension of Certification	Major Noncompliances – Denial or Proposed Revocation of Certification
205.200 General					
205.200 General	Must comply with applicable provisions of the NOP regulations.	Operation is generally in compliance, but some aspect of the OSP or recordkeeping system is incomplete or poorly organized.	Some required element of the OSP is missing. Operation is not in compliance with some aspect of the regulations.	Failure to follow OSP. Failure to respond to prior notice of noncompliance. Inadvertent violation of regulations resulting in noncompliant product being sold as organic. One year suspension.	Willful violation of regulations. Fraudulent concealment of violations. Willful sale or labeling of noncompliant products as organic.
205	the and water quality.	Records do not clearly demonstrate that natural resources are maintained or	OSP does not directly address the requirement to maintain or improve	Failure to follow OSP, resulting in a degradation of the quality of natural	Falsification of documents to conceal degradation of soil and water

Top columns describe classes of violations

Penalty Matrix: How It Is Used



- The purpose of the Penalty Matrix is to promote consistency in adverse actions and other certification decisions across certifying agents
- Each adverse action and certification decision situation is unique

Penalty Matrix: How It Is Used



- The Penalty Matrix is not exhaustive
 - Align specific cases against examples in the Penalty Matrix
 - If you have questions or comments about the Penalty Matrix, contact your Accreditation Manager

Steps for Using the Matrix



1. Identify the issue or noncompliance and the regulatory citation
2. Find the citation and description in the Penalty Matrix
3. Compare your case against examples in the grid
4. Determine which class the issue or violation belongs to
5. Establish certification response accordingly

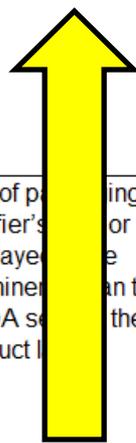
1. Identify Issue/Noncompliance and Regulatory Citation (Before Consulting the Penalty Matrix)

minimally than the USDA seal on the product label.

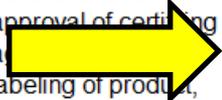
		E	F	G	
		Noncompliances – Notice of Noncompliance - Denial of Initial Certification	Major Noncompliances – Denial or Proposed Suspension of Certification	Major Noncompliances – Denial or Proposed Revocation of Certification	
		Incorrect color used for USDA organic seal.	Failure to address notice of noncompliance regarding sale of packaged products with labels improperly displaying USDA seal. One year suspension.	Deliberate sale of nonorganic product with labels displaying USDA seal.	
		Use of packaging with certifier's seal or logo displayed more prominently than the USDA seal on the product label.	Failure to address notice of noncompliance regarding use of packaging with certifier's seal or logo displayed more prominently than the USDA seal on the product label. One year suspension.	Willful packaging of nonorganic products with packaging showing the seal or logo of a certifying agent.	
205.303(b)(1) Identification of organic on ingredient statement	Agricultural products that are labeled "organic" must identify each organic ingredient in the ingredient statement with the word "organic" or with an asterisk or other reference mark that is defined below the ingredient statement to indicate the ingredient is organically produced. Water or salt included as ingredients cannot be identified as organic.	Failure to obtain approval of certifying agent prior to labeling of product, but no material labeling violations.	Failure to get label approved by certifying agent, resulting in use of packaging with incomplete identification of organic ingredients.	Willful use of packaging with incomplete identification of organic ingredients. One year suspension.	Falsifying records to conceal misrepresentation of nonorganic ingredients as "organic."

	General Standards	Summary of Provision	Minor Issues – Conditions for Continued Certification	Noncompliances – Notice of Denial or Proposed Suspension of Certification	Major Noncompliances – Denial or Proposed Suspension of Certification	Major Noncompliances – Denial or Proposed Revocation of Certification
1	205.303(a)(4) Use of USDA seal	(4) the USDA seal.	Failure to obtain approval of certifying agent prior to labeling of product, but no material labeling violations.	Incorrect color used for USDA organic seal.	Failure to address notice of noncompliance regarding sale of packaged products with labels improperly displaying USDA seal. One year suspension.	Deliberate sale of nonorganic product with labels displaying USDA seal.
27	205.303(a)(5) Use of seal or logo of certifying agents	(5) the seal, logo, or other identifying mark of the certifying agent which certified the production or handling operation producing the finished product and any other certifying agent that certified production or handling operations producing raw organic product or organic ingredients used in the finished product, provided that the handler producing the finished product maintain records, pursuant to this part, verifying organic certification of the operations producing such ingredients, and that such seals or marks are not individually displayed more prominently than the USDA seal.	Failure to obtain approval of certifying agent prior to labeling of product, but no material labeling violations.	Use of packaging with certifier's seal or logo displayed more prominently than the USDA seal on the product label.	Failure to address notice of noncompliance regarding use of packaging with certifier's seal or logo displayed more prominently than the USDA seal on the product label. One year suspension.	Willful packaging of nonorganic products with packaging showing the seal or logo of a certifying agent.
28	205.303(b)(1) Identification of organic ingredient statement	Agricultural products that are labeled "organic" must identify each organic ingredient in the ingredient statement with the word "organic" or with an asterisk or other reference mark that is defined below in the ingredient statement to indicate the ingredient is organically produced. Water or salt included as ingredients cannot be identified as organic.	Failure to obtain approval of certifying agent prior to labeling of product, but no material labeling violations.	Failure to get label approval of certifying agent resulting in use of packaging with incomplete identification of organic ingredients.	Willful use of packaging with incomplete identification of organic ingredients. One year suspension.	Falsifying records to conceal misrepresentation of nonorganic ingredients as "organic."

4. Determine Class



3. Compare Case To Grid Examples



2. Find Citation and Description

5. Establish Adverse Action or Certification Response Accordingly

	D Issues – Violations for Continued Certification	E Noncompliances – Notice of Noncompliance - Denial of Initial Certification	F Major Noncompliances – Denial or Proposed Suspension of Certification	G Major Noncompliances – Denial or Proposed Revocation of Certification	
to obtain approval of certifying agent prior to labeling of product, but no material labeling violations.	Incorrect color used for USDA organic seal.	Failure to address notice of noncompliance regarding sale of packaged products with labels improperly displaying USDA seal. One year suspension.	Deliberate sale of nonorganic product with labels displaying USDA seal.		
of seal or logo of certifying agents	certifying agent which certified the production or handling operation producing the finished product and any other certifying agent that certified production or handling operations producing raw organic product or organic ingredients used in the finished product, provided that the handler producing the finished product maintain records, pursuant to this part, verifying organic certification of the operations producing such ingredients, and that such seals or marks are not individually displayed more prominently than the USDA seal.	Use of packaging with certifier's seal or logo displayed more prominently than the USDA seal on the product label.	Failure to address notice of noncompliance regarding use of packaging with certifier's seal or logo displayed more prominently than the USDA seal on the product label. One year suspension.	Willful packaging of nonorganic products with packaging showing the seal or logo of a certifying agent.	
205.303(b)(1) Identification of organic on ingredient statement	Agricultural products that are labeled "organic" must identify each organic ingredient in the ingredient statement with the word "organic" or with an asterisk or other reference mark that is defined below the ingredient statement to indicate the ingredient is organically produced. Water or salt included as ingredients cannot be identified as organic.	Failure to obtain approval of certifying agent prior to labeling of product, but no material labeling violations.	Failure to get label approved by certifying agent, resulting in use of packaging with incomplete identification of organic ingredients.	Willful use of packaging with incomplete identification of organic ingredients. One year suspension.	Falsifying records to conceal misrepresentation of nonorganic ingredients as "organic."

Steps for Using the Matrix



1. Identify the issue or noncompliance and the regulatory citation
2. Find the citation and description in the Penalty Matrix
3. Compare your case against examples in the grid
4. Determine which class the issue or violation belongs to
5. Establish certification response accordingly

Case Scenario Exercises



- Form groups of 5 members each and introduce yourselves.
 - Groups should have cross-certifier representation
 - 1-2 members of your group needs access to a copy of the Penalty Matrix
 - NOP will give you a list of scenarios
- Choose 2 scenarios from the provided list to work as a group
 - Or, choose a scenario provided by a group member
- Make assumptions to follow the 5 steps.
- Record assumptions and log how they impact your group's decision.

Recap: Steps for Using the Matrix



1. Identify the issue or noncompliance and the regulatory citation
2. Find the citation and description in the Penalty Matrix
3. Compare your case against examples in the grid
4. Determine which class the issue or violation belongs to
5. Establish certification response accordingly

Case Scenario Exercises



- What factual assumptions did you need to make it order to work the five steps?
- What surprised you about this decision-making process?
- What worked well in this decision-making process?
- What advice would you have for someone else planning to use the Penalty Matrix to make a certification determination?

Summary: NOP Penalty Matrix



- Goal is to increase consistency in adverse actions and other certification determinations
- The primary purpose is to distinguish minor issues from noncompliances and not require NONCs for every finding
- Penalty Matrix is a living, collaborative tool and we are looking for input to make the next version align with the goals of sound and sensible certification