Program Handbook: Guidance And Instructions For Accredited Certifying Agents & Certified Operations

2010

September 1, 2010

U.S. Department of Agriculture
Agricultural Marketing Service
National Organic Program

Organic Integrity from Farm to Table, Consumers Trust the Organic Label.

Adopted: September 1, 2010

Program Handbook

Accreditation

International

Compliance and Enforcement

Compliance and Analysis NOP Appeals Procedures

Introduction

Welcome to the "*The Program Handbook: Guidance and Instructions for Accredited Certifying Agents and Certified Operations."* The goal of the Program Handbook is to provide those who own, manage, or certify organic operations with guidance and instructions that can assist them in complying with the National Organic Program (NOP) regulations.

The NOP is issuing this Program Handbook under the auspices of the Office of Management and Budget (OMB) Bulletin on Agency Good Guidance Practices (GGPs) published January 25, 2007 (72 FR 3432-3440). The purpose of the OMB's GGPs is to help ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements. The OMB further requires agencies to maintain a current electronic list of all guidance documents as defined in the Bulletin.

The NOP strives to ensure uniformity in the development, issuance, and use of guidance and instruction documents related to NOP's regulatory, accreditation, and enforcement activities. The use of guidance and instructions to assist in developing uniform regulatory decisions is a standard government practice. This introduction to the Program Handbook explains the difference between NOP guidance and instruction documents and outlines their purpose, legal effect, and the process by which they are authorized, reviewed, revised and disseminated to the public.

Guidance vs. Instructions

There are two parts to the Program Handbook. The first part is comprised of Level 1 Guidance Documents. Level 1 Guidance Documents set forth interpretations of NOP statutory or regulatory requirements, changes in interpretation or policy, or address unusually complex or highly controversial issues.

The second part is comprised of Level 2 Instruction Documents. Level 2 Instruction Documents set forth or clarify existing NOP procedures. Level 2 Instructions are meant to inform certifying agents and certified operations about best practices for conducting business related to certification, accreditation, international activities, and compliance and enforcement. Unless otherwise noted, Level 2 Instruction documents are effective immediately upon their issuance and publication in the Program Handbook.

The term "guidance and instruction documents" collectively refers to documents prepared by the NOP, for certifying agents, certified organic operations, and the public that:

1. Relate to the production, handling, processing, labeling and marketing of organic food products;
2. Relate to the accreditation of certifying agents and the certification of organic producers and handlers;
3. Relate to the National List of Allowed and Prohibited Substances, State Organic Programs, fees, compliance, inspection and testing, reporting and exclusion from sale, compliance, adverse action appeals process and enforcement policies regarding agricultural products regulated under 7 CFR Part 205;

4. Establish policies and procedures or describe the program's policy and regulatory approach to an issue.

Guidance and Instruction Documents do not include documents relating to program reports, general information documents provided to consumers, speeches, journal articles and editorials, media interviews, press materials, letters addressing enforcement or compliance actions, or other communications directed to individual persons or firms.

The purpose of issuing Guidance and Instruction Documents is to:

1. Provide assistance to the regulated industry by clarifying requirements that have been imposed by the Act or its implementing regulations and by explaining how industry may comply with those statutory and regulatory requirements, and
2. Provide standard operating procedures and specific review and enforcement approaches to help ensure that all parties implement the program's mandate in an effective, fair, and consistent manner.

The NOP will solicit public input through a notice in the Federal Register prior to finalizing new Level 1 Guidance Documents for inclusion in this Program Handbook, *unless*:

1. There are significant regulatory justifications for immediate implementation;
2. There is a new statutory requirement, executive order, or court order that requires immediate implementation, and guidance is needed to help effect such implementation;
3. The guidance presents a less burdensome policy that is consistent with the purposes of the Act and implementing regulations; or
4. The guidance was issued prior to NOP's publication of this Handbook. Five guidance documents (NOP 5006, NOP 5008, NOP 5012, NOP 5014 and NOP 5016) meet this criterion. These are republished "as is" in the first part of this Handbook.

Legal Effect of Guidance and Instructions

Guidance and Instruction Documents do not themselves establish legally enforceable rights or responsibilities and are not legally binding on the public or the program. Rather, the documents explain how the Organic Foods Production Act (OFPA) of 1990 (7 U.S.C 6501-6522) and its implementing regulations (7 CFR part 205) apply to certain regulated activities. In addition, because a guidance or instruction document represents the program's current thinking on the subject addressed in the document, the NOP will take steps to ensure that the program does not deviate from the document without appropriate justification and appropriate supervisory concurrence.

The Guidance and Instruction Documents provide a uniform method for operations to comply that can reduce the burden of developing their own methods and simplify audits and inspections. Alternative methods that comply with the Act and its implementing regulations are acceptable. The NOP strongly encourages accredited certifying agents and certified operations to discuss alternative approaches with the NOP before implementing them to avoid unnecessary or wasteful expenditures of resources and to ensure the proposed alternative approach complies with OFPA and its implementing regulations.

Authorization Policy

All drafts of Level 1 Guidance Documents, Level 1 Guidance Documents, and Level 2 instructions will be reviewed and approved by the Deputy Administrator of the National Organic Program prior to their publication.

Review and Revision of Guidance and Instruction Documents

The NOP intends to review existing Guidance and Instruction Documents on a regular basis. The NOP will, when appropriate, update or revise Guidance and Instruction Documents in accordance with OMB's GGPs. In addition, when significant changes are made to an applicable statute or regulation, the NOP will, on its own initiative, review and, as appropriate, revise Guidance and Instruction Documents relating to that changed statute or regulation.

Public Dissemination

The most recent edition of the Program Handbook is available for viewing and downloading through the NOP web site (**www.ams.usda.gov/nop**). The NOP will also make the Program Handbook available in hard copy, upon request to: Standards Division, National Organic Program, 1400 Independence Ave., SW., Room 2646-S, Ag Stop 0268, Washington, D.C. 20250-0268. Telephone: (202) 720-3252; Fax (202) 205-7808. The public will be notified when new draft guidance is available for public comment through a notice in the Federal Register.

NOP envisions publishing new editions of this Handbook as the NOP develops additional guidance and instructions on topics that require clarification. Future topics include addressing pending National Organic Standards Board (NOSB) recommendations that are suitable for guidance.

Contact Information

Members of the public who wish to request that the agency issue, reconsider, modify, or rescind a guidance document, or to complain that the agency is not following the procedures in OMB's Bulletin on Good Guidance Practices or is improperly treating a guidance document as a binding requirement, may do so by sending an email to **NOP.Guidance@ams.usda.gov**.

Or by mailing a letter to the following office:

Standards Division
National Organic Program
U.S. Department of Agriculture
Room 2646-So. (Stop 0268)
1400 Independence Ave SW
Washington, DC 20250-0268

Guidance
Processed Animal Manures in Organic Crop Production

1. Purpose and Scope

This NOP instruction provides policies and procedures for the use of heat processed animal manures in crop production operations certified as organic under the National Organic Program (NOP). This instruction does not apply to compost teas or other products that may contain raw or composted manure.

These policies do not supersede requirements of other Federal and State laws and regulations. However, written procedures and records prepared by producers to meet NOP requirements may be the same as those prepared to meet other regulatory requirements.

2. Background

The NOP regulations require that uncomposted animal manures be applied at least 90 days prior to harvest for crops whose edible portions do not come in contact with the soil and at least 120 days prior to harvest of crops whose edible portions do come in contact with the soil. However, while the regulations do not place the same restrictions on properly composted animal manures, the regulations do not address heat processed animal manure products and their proper use in organic production. In the past, the NOP had determined that processed manures, since they had not been composted according to the NOP regulations, would fall in the category of uncomposted manure products for the purpose of determining any restrictions which should be placed on their use in organic production.

At its September 2006 meeting, the National Organic Standards Board (NOSB) made a recommendation regarding the use of processed animal manures in organic farming operations. In its recommendation, the NOSB said that when animal manures are treated to a certain temperature over a given period of time and then subsequently dried to a very low moisture level, the resulting product should fulfill the pathogen reduction requirements imposed on compost in the NOP regulations. Therefore, the NOSB recommended that the NOP issue guidance to the effect that processed manure products that meet prescribed minimum time, temperature, and moisture requirements, or processed manure products that have the same level of pathogen reduction as the prescribed process, should be allowed for use without pre-harvest time restrictions.

In reviewing the NOSB's recommendation, NOP officials met with manufacturers of processed manure products and reviewed facilities used to produce these products. We also met with representatives of the Organic Materials Review Institute (OMRI) to discuss current practices for the use of these products in organic agricultural production. In addition, we reviewed and considered the Compost Task Force Recommendation dated April 18, 2002.

Upon completion of our review of the recommendation, task force report, supporting documentation, site reviews, and industry consultations, the NOP finds that it concurs with and accepts the NOSB's recommendation to remove the time restrictions previously imposed on processed manure products and allow the unrestricted use of processed manure products when prepared in accordance with the

guidelines in this document. We noted, however, that the NOSB placed a more restrictive annotation on the use of the processed manure, requiring that post-planting applications be applied below the surface of the soil.

Our review of the task force report indicated that such restrictions may not be necessary, so we have not incorporated that additional restriction into this operational policy.

We also noted that the NOSB recommendation specified a minimum temperature for the product to be held for at least one hour without prescribing a minimum time for continuous flow processes. In consulting with OMRI, we learned that achieving at least 165 degrees Centigrade in a continuous flow process will achieve the necessary pathogen reduction, so we added that option to the criteria for an acceptable process.

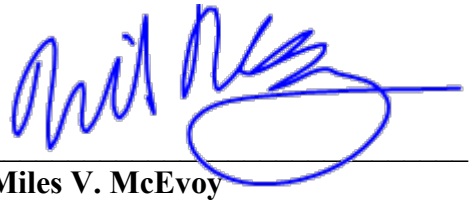
Finally, we noted that the NOSB recommended that processed manure test negative for the presence of *Salmonella* and fecal coliform organisms. In considering this element of the recommendation, neither the product manufacturers nor OMRI found this to be a practical requirement but agreed that a very low level of pathogens could be reasonably accomplished with the prescribed process. Therefore, in developing the policy for processed manures, we used the very low microbial counts consistent with current industry practice, which could be used to indicate a sufficient level of pathogen reduction.

3. Policy

Processed manure may be used as a supplement to a soil building program without a specific interval between application and harvest. As always, producers are expected to comply with all applicable requirements of the NOP regulations with respect to soil quality, including ensuring the soil is enhanced and maintained through proper stewardship.

Processed manure products must be treated so that all portions of the product, without causing combustion, reach a minimum temperature of either 150° F (66° C) for at least one hour or 165° F (74° C), and are dried to a maximum moisture level of 12%; or an equivalent heating and drying process could be used. In determining the acceptability of an equivalent process, processed manure products should not contain more than $1x10^3$ (1,000) MPN (Most Probable Number) fecal coliform per gram of processed manure sampled and not contain more than 3 MPN Salmonella per 4 gram sample of processed manure.

Approval



Miles V. McEvoy
Deputy Administrator
National Organic Program

Guidance
Reassessed Inert Ingredients

1. Background

The National Organic Program (NOP) regulations currently allow use of inert ingredients which appear on the Environmental Protection Agency (EPA) *List 4A – Minimal Risk Inert Ingredients* and *List 4B – Other ingredients for which EPA has sufficient information to reasonably conclude that the current use pattern in pesticide products will not adversely affect the public health or the environment* – in a variety of applications, primarily as pesticides in organic production operations. These lists are maintained and managed by EPA.

EPA has been reassessing exemptions from tolerances for inert ingredients in pesticide products to ensure that they meet the safety standard established by the Food Quality Protection Act (FQPA). FQPA requires the reassessment of inert ingredient tolerances and tolerance exemptions that were in place prior to August 3, 1996. EPA completed their reassessments in 2006.

EPA reassessments resulted in the revocation of a few List 4 inert ingredients, and are therefore prohibited under NOP. List 4 inert ingredients that have been revoked for use in pesticide formulations and are now prohibited under NOP are as follows:

- Acetylated lanolin alcohol (CAS Reg. No. 91994-94-4); Revoked in 70 FR 31401, June 1, 2005.
- Acrylic acid methyl ester, polymer with acrylonitrile and 1,3-butadiene (CAS Reg. No. 27012-62-0); Revoked in 71 FR 14411, March 22, 2006; the tolerance exemption is called "Nitrile rubber modified acrylonitrile methylacrylate conforming to 21 CFR 177.1480.
- Coumarone – indene resin (CAS Reg. No. 63393-89-5); Revoked in 71 FR 14411, March 22, 2006.
- Manganous oxide (CAS Reg. No. 1344-43-0); Revoked in 71 FR 45415, August 9, 2006.
- Pentaerythritol monostearate (CAS Reg. No. 78–23–9); Revoked in 71 FR 14411, March 22, 2006.
- Pentaerythritol tetrastearate CAS Reg. No. 115–83–3); Revoked in 71 FR 14411, March 22, 2006.
- Polyglyceryl phthalate ester of coconut oil fatty acid (CAS Reg. No. 66070-87-9); Revoked in 71 FR 45415, August 9, 2006.
- Sodium fluoride (CAS Reg. No. 7681-49-4); Revoked in 70 FR 31401, June 1, 2005.

EPA has also reclassified a number of List 3 inert ingredients (inerts of unknown toxicity) as List 4 inert ingredients. Those materials have not been added to EPA's published List 4 documents but appear through individual approvals issued by EPA and posted on their website.

EPA has informed USDA that the "Inerts List" system may no longer be effective or available for the NOP to reference in the Regulations. Also impacted is the EPA review and labeling program for determining the compatibility of pesticides with the Regulations. As a result, the NOP regulations must be amended to acknowledge the inert tolerance reassessments conducted by EPA. NOP will collaborate

with EPA and the National Organic Standards Board (NOSB) to determine the most effective and efficient way to amend the regulations.

2. Policy

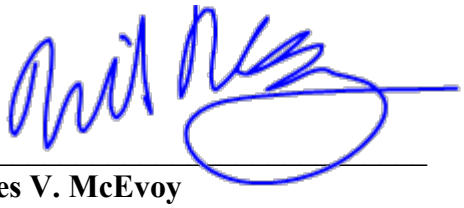
Parties reviewing pesticide product ingredients for compliance with the NOP are advised to use EPA's August 2004 lists of approved List 4 inert ingredients, minus the revoked inert ingredients. Links to the aforementioned lists are as follows:

- List 4A - http://www.epa.gov/opprd001/inerts/inerts_list4Aname.pdf
- List 4B - http://www.epa.gov/opprd001/inerts/inerts_list4Bname.pdf

The NOSB has requested that inert ingredients reassessed by EPA, but not previously authorized for use under the NOP remain prohibited in organic agriculture. Until the NOP and NOSB can determine the best course to take in response to EPA's reassessment decisions, NOP will concur with the NOSB's request and grant that use of such ingredients must be petitioned. A petition may be submitted to the NOSB using the National List petition procedures. Petitioned substances must be recommended by the NOSB and added to the National List through notice and comment rulemaking before use in organic agriculture.

This policy will remain in effect until superseded by regulatory changes or new guidance. Certifiers and other affected parties should consult the NOP Document Control Masterlist for the most current guidance on this topic.

Approval



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Guidance
Approval of Liquid Fertilizers for Use in Organic Production

1. Background

On February 20, 2009, the National Organic Program (NOP) issued a notice to its accredited certifying agents (ACA) that it was no longer confident that the following liquid fertilizer products can be shown to be compliant with the NOP regulations: Marizyme™ and Agrolizer™. Both of these products were manufactured by Port Organic, Ltd., which was no longer operating at that time. The notice further advised that continued use of the products Marizyme™ and Agrolizer™ without the ability to prove they are in full compliance with the NOP standards could jeopardize the organic status of operations, including land and products.

NOP announced it will focus increased scrutiny on how inputs are approved for use by certified organic operations during accreditation audits of ACAs conducted beginning in 2009, beginning with an emphasis on liquid nitrogen fertilizers. Further, the NOP advised vigilance in the approval of all liquid fertilizer products and other inputs and advised ACA's of steps to be taken by October 1, 2009 for the review of all nitrogen liquid fertilizers with a nitrogen analysis of greater than 3 percent. Included in this announcement, NOP required that reviews must verify that no synthetic nitrogen equipment, tanks, or supplies must be present within 100 yards of the facility that produces the organic approved inputs at any time of the year.

On March 4, 2009, the NOP issued an amendment to the previous notice to clarify that while fertilizer producers were required to obtain third-party verification of their ingredients by October 1, 2009, all fertilizers were expected to be in compliance at the time of the notice. The amendment further clarified that manufacturers who do not produce liquid fertilizers with nitrogen analysis content greater than 3 percent are not required to undergo third-party inspections unless further advised by the NOP.

2. Terms Defined

For the purpose of this instruction, the following definitions shall apply:

Material evaluation program: An organic certification or other program, independent from the crop producer or the input manufacturer, with the expertise to verify compliance of inputs used in organic production and handling with the NOP regulations. The expertise and approval of material evaluation programs will be a component of the NOP accreditation program. Approved material evaluation programs include NOP accredited certifying agents and the Organic Materials Review Institute (OMRI). ACAs and OMRI are audited regularly to evaluate their compliance with the NOP regulations and this policy.

3. Policy

All liquid fertilizers with a nitrogen analysis greater than 3 percent must be approved by a material evaluation program to be used in organic production. When approving organic systems plans (OSP), ACA's must verify and document that all liquid fertilizers with a nitrogen analysis greater than 3 percent have been approved by a material evaluation program. It is a violation of the NOP regulations to apply unapproved liquid fertilizers to certified organic or transitional land.

4. Procedures for approving liquid fertilizers with a nitrogen analysis greater than 3 percent

Manufacturers seeking approval of liquid fertilizers with a nitrogen analysis greater than 3 percent for use in organic production must:

1. Produce inputs that comply with all NOP and other regulatory requirements.
2. Maintain complete records sufficient to demonstrate compliance with the NOP regulations.
3. Submit complete documentation describing all ingredients (active and inactive), manufacturing processes, process control information, testing, and other information as required by the material evaluation program.
4. Request and complete an onsite audit by a material evaluation program.

Approval. Upon receipt of complete documentation and request for an onsite audit, the material evaluation program must:

1. Conduct a complete review of all documented processes by a qualified inspector.
2. Conduct annual onsite audits of manufacturing facilities and processing by a qualified, experienced inspector to verify compliance with NOP requirements and stated procedures.
3. Conduct a balance-in / balance-out analysis of all ingredients and finished products including, when appropriate, by nitrogen content.
4. Prepare and issue a complete report of all observations and findings to the manufacturer and retain for review by the NOP.
5. Issue a signed certificate or other instrument which specifically lists all products approved under the scope of the material evaluation program. Document must state "Approved for use in NOP organic production by [name of material evaluation program who conducted the material review and onsite inspection]."
6. Conduct at least one annual unannounced inspection during manufacturing to ensure ongoing compliance.
7. Not issue approval for any fertilizer or other input which does not fully comply with the regulations.

Criteria for approval of fertilizer manufacturers. A material evaluation program may issue written approval of the fertilizer manufacturing process if:

1. Written procedures fully describe the manufacturing process.
2. Procedures fully account for product plant nutrient content and other attributes.
3. On-site inspections confirm that all NOP requirements are met and there is no evidence of fraud in formulation,
4. The infrastructure necessary to produce the approved finished product is present and complete. This may include dry and liquid storage areas, conveyances (such as forklifts,

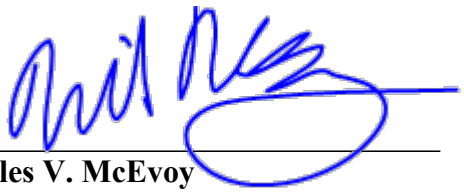
trucks, piping), finished product storage, and both the ingredient and finished product transportation infrastructure.
5. Shipping and receiving balances for ingredients and finished products support findings of product compliance.
6. Unannounced inspections and analytical testing verify compliance.

With this notice, the NOP removes the requirement for a minimum of 100 yards of separation between synthetic nitrogen storage facilities and organic fertilizer production areas.

5. Document Control

This document supersedes NOP Notices to Certifiers on this subject dated February 20, 2009 and March 4, 2009, which are now obsolete.

Approval



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National Organic Program

Guidance
Certification of Organic Yeast

1. Background

There has been considerable discussion regarding the eligibility of yeast to be certified as organic under the National Organic Program (NOP) regulations. Section 205.605(a) of NOP regulations includes yeast as a natural, nonagricultural substance allowed as an ingredient in or on processed products labeled as "organic" or "made with organic."

Clarifying the definition of "nonagricultural" or other actions, such as removing a substance from the National List, would require action by the National Organic Standards Board (NOSB). Until such actions occur, NOP finds it necessary to clarify that yeast may be labeled as organic and used in processed organic food products.

2. Discussion

Organic handling requirements (7 CFR §205.270) allow the use of nonagricultural substances listed in §205.605, such as yeast, to be used in or on a processed agricultural product that is represented as "organic" if the agricultural product contains at least 95 percent organically produced raw or processed agricultural products. The remaining 5 percent can be a nonagricultural substance such as those enumerated in §205.605; this includes yeast. Therefore, for example, if yeast is added to a certified organic agricultural product such as wheat flour and processed according to §205.270, the resulting product can be certified and labeled "organic."

Certification of processed agricultural products which are listed as nonagricultural on §205.605(a) is not without precedence. For example, NOP previously determined that natural flavors, though they are listed as allowable nonagricultural products in organic production, can be certified organic if processed in compliance with NOP regulations.

The status of yeast has been of particular interest to livestock producers who feed yeast to livestock as a non-agricultural, non-synthetic feed supplement. Yeast is available for use in livestock feed in either certified organic form or as an allowed non-organic input specified on the National List.

3. Policy

Yeast
A certified organic operation may sell, label, or represent yeast as "organic" when produced in compliance with an approved organic systems plan. Yeast products produced from certified organic inputs such as certified organic flour and certified organic corn steep liquor may be certified as organic. For yeast to be certified as organic, yeast used as a starter culture does not have to be certified as organic. However, if certified organic yeast is used as the starter culture, subsequently produced yeast is eligible for certification as "100 percent organic" as long as all other production and handling requirements are met.

Yeast used in Livestock Feed
Certified organic livestock operations may feed non-organic yeast to their livestock as a nonsynthetic feed supplement per §205.237(a).

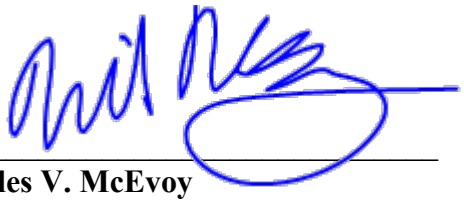
4. Regulatory References

- 7 CFR §205.270 *Organic handling requirements.*
  (b) Nonagricultural substances allowed under §205.605 and non-organically produced agricultural products allowed under§205.605 may be used:
  1. *In or on processed agricultural product intended to be sold, labeled, or represented as "organic," pursuant to §205.301(b), if not commercially available in organic form.*
  2. *In or on a processed agricultural product intended to be sold, labeled, or represented as "made with organic (specified ingredients or food group(s)), " pursuant to §205.301(c).*

- 7 CFR §205.301 *Product composition.*
  (b) Products sold, labeled, or represented as "organic." A raw or processed agricultural product sold, labeled, or represented as "organic" must contain (by weight or fluid volume, excluding water and salt) not less than 95 percent organically produced raw or processed agricultural products. Any remaining product ingredients must be organically produced, unless not commercially available in organic form, or must be nonagricultural substances or nonorganically produced agricultural products produced consistent with the National List in subpart G of this part. If labeled as organically produced, such product must be labeled pursuant to §205.303.

- 7 CFR §205.605 *Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s)).*"
  (a) Nonsynthetics allowed: Yeast – nonsynthetic, grown on petrochemical substrate and sulfite waste liquor is prohibited (Autolysate; Bakers; Brewers; Nutritional; and Smoked – nonsynthetic smoke flavoring process must be documented).

Approval



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Guidance
Allowance of Green Waste in Organic Production Systems

1. Background

In 2009, the California Department of Food and Agriculture (CDFA) found bifenthrin residues in samples of three different commercial green waste composts. Bifenthrin is a synthetic pyrethroid insecticide that is prohibited under the NOP regulation. Acting under their authority as a State Organic Program and under advisement from the National Organic Program, CDFA advised organic producers and accredited certifying agents in California that these three green waste composts were not allowed to be used in organic crop production.

In the fall of 2009, the NOP sent a draft policy to accredited certifying agents that addressed pesticide residues in compost. We received six comments, all of which urged the NOP to take an alternative approach. In January 2010, a meeting was held in Monterey, California to discuss the draft policy and other alternatives.

In March 2010, the NOP received compost test results from CCOF, an accredited certifying agent. Samples were collected from crop fields where green waste compost had been applied in July 2009, at the rate of 5-6 tons per acre. The green waste compost had been tested in December 2009 and showed bifenthrin residues of 0.09 ppm. Bifenthrin residues were not detected in any of the soil or crop samples, collected in February 2010, at a limit of detection of 0.01 ppm.

After considering comments and the sample results, the NOP is providing this information to certifiers, certified producers and other interested parties concerning the use of green waste and green waste compost in organic production systems.

2. Definitions

- Green waste is biodegradable waste that can be composed of garden or park waste, such as grass or flower cuttings and hedge trimmings, as well as domestic and commercial food waste. Green waste is often collected in municipal curbside collection schemes or through private waste management contractor businesses.
- Compost, as defined in the NOP regulations at 7 CFR 205.2, is the product of a managed process through which microorganisms break down plant and animal materials into more available forms suitable for application to the soil.
- Feedstocks are bulk raw materials that are mixed together during the composting process.

3. Policy

The Organic Foods Production Act of 1990 (OFPA), 7 U.S.C. Section 6501, et. seq., as amended, as implemented in 7 CFR Part 205, National Organic Program (NOP) Final Rule, regulates the production, handling, processing, and labeling of all raw or processed agricultural products to be sold, labeled, or represented as organic in the United States.

The NOP regulations support the use of composted plant and animal materials to maintain or improve soil organic matter. According to 7 CFR 205.203(c):

The producer must manage plant and animal materials to maintain or improve soil organic matter content in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, pathogenic organisms, heavy metals, or residues of prohibited substances.

Approved feedstocks for compost include:

- Plant and animal materials, such as, crop residues, animal manure, food waste, yard waste;
- Nonsynthetic substances not prohibited by 7 CFR 205.602;
- Synthetic substances specifically allowed for use as a compost feedstock per 7 CFR 205.601.
-

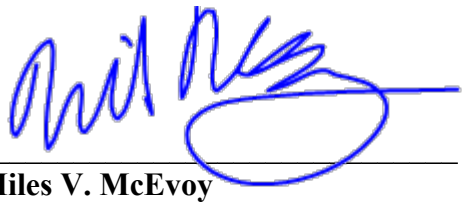
Compost that is produced with prohibited feedstocks such as urea, recycled wallboard, or sewage sludge is prohibited. The NOP does not allow the use of compost that contains synthetic substances that are not on the National List. 7 CFR 205.203(e) states:

> *The producer must not use: (1) Any fertilizer or composted plant and animal material that contains a synthetic substance not included on the National List of synthetic substances allowed for use in organic crop production;*

However, the NOP regulations were established with recognition that background levels of synthetic pesticides may be present in the environment and, therefore, may be present in organic production systems. This is referred to as unavoidable residual environmental contamination (UREC) in the regulations. Furthermore, the NOP standards are process based and do not mandate zero tolerance for synthetic pesticide residues in inputs, such as compost. Compost that is produced from the approved feedstocks, listed above, is acceptable for use in organic production, provided that any residual pesticide levels do not contribute to the contamination of crops, soil or water.

Green waste and green waste compost that is produced from approved feedstocks, such as, non-organic crop residues or lawn clippings may contain pesticide residues. Provided that the green waste and green waste compost (i) is not subject to any direct application or use of prohibited substances (i.e. synthetic pesticides) during the composting process, and (ii) that any residual pesticide levels do not contribute to the contamination of crops, soil or water, the compost is acceptable for use in organic production.

Approval



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NOP 5017-1
Effective Date: March 17, 2010
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Guidance
Calculating Dry Matter Intake from Pasture

The Access to Pasture final rule (February 17, 2010) requires that ruminant animals be managed on pasture and graze daily throughout the grazing season. To ensure a pasture-based management system, the rule requires that ruminant animals derive not less than an average of 30 percent of their dry matter intake (DMI) from pasture during the grazing season (grazed from vegetation rooted in pasture or residual forage).

DMI is to be calculated as an average over the entire grazing season for each class and type (stage of production) of animal. The length of the grazing season is determined by the climate patterns and weather events for a geographical location and availability of irrigation. The grazing season must be at least 120 days and does not have to be continuous. This provides flexibility to make adjustments when inclement weather, season, and or climate conditions arise and cause breaks in a continous grazing period, due to poor growing conditions, for example. There are a variety of acceptable methods for determining dry matter demand and intake that can be readily used by the producer and inspected by the certifying agent. The step-by-step guide, below, presents one method for determining dry matter demand and dry matter intake. This method is commonly used among livestock producers to calculate dry matter demand and dry matter intake, and is shown here in the context of the pasture requirements for organic ruminants. The accompanying NOP DMI Calculation Worksheets can be used to calculate and record dry matter intake. These worksheets can be incorporated into the Organic Systems Plan.

An initial DMI should be calculated at the beginning of the grazing season for each class and type of animal; additional calculations should be made whenever a change occurrs. For example, the nutritional requirements of a ruminant animal may vary/change within the grazing season. If a producer wants to maximize the energy expenditure of their animals (e.g., lactation, growth) at a given time, he/she will increase or decrease the DMI to account for the new dry matter demands based on increased/decreased energy needs. To illustrate another example, the diet of an animal may change over the grazing season due to the availability, quantity, and quality of the pasture (forages). Ultimately, a producer will want to show the average of those values over the entire grazing season in the organic system plan.

What is dry matter intake?

Dry matter intake is the amount of feed a cow consumes per day on a moisture-free basis. Most producers are used to dealing with feed on an as-fed basis (pounds of feed actually fed to animal with the water in it); however, in order to determine an accurate estimate of the nutrient intake and to compare feeds, an animal's diet must be analyzed on a moisture-free basis. There are three major factors that can affect a ruminant animal's dry matter intake: feed ration (the quality and availability of forage and the amount and type of supplements); the environment; and the animal itself (including size, body condition, stage of life and level of production).

DMI is a factor that must be estimated before an animal's diet can be properly calculated; it establishes the amount of nutrients available to an animal for health and production. DMI is the level of intake that an animal must consume from a ration that contains the recommended energy concentration for the animal's stage of life and level of production. It is important for DMI to be actually measured or accurately estimated so that diets can be properly formulated to prevent underfeeding or overfeeding of nutrients, and to promote efficient nutrient use.

Estimating daily dry matter intake from pasture is a challenge. Most ruminants eat to satisfy a need for total pounds of dry matter (physical fill) or eat to meet energy needs (energy intake/requirements in response to energy expenditure such as milk production); thus, knowing the predicted dry matter demand will allow you to estimate dry matter intake from pasture. Producers must consider the dry matter demand and nutritional requirements of the class of animal for its given stage of life and production.

Most producers will predict, or estimate, DMI from reference tables developed for this purpose or published data. Predicting DMI is not an exact science; estimations for dry matter demand and intake do not account for the numerous physiological, environmental, and management factors that alter dry matter demand; therefore, producers should use these values as general estimates. Producers will need to evaluate animals' diets and observe the herd to make sure the animals' nutritional requirements are being met. NOP encourages producers to use local, regional, and state experts, such as state Extension Service, Natural Resources and Conservation Service (NRCS) grazing land specialists, university experts, nutritional consultants, and veterinarians to assist in analyzing the numerous physiological, environmental, and management factors specific to your operation that may alter dry matter demand for your animals so that the most accurate DMI can be estimated.

Below is a step-by-step guide on calculating DMI from pasture. Dry matter demand is determined from the expected total DMI as outlined by the National Research Council (NRC) or other published data (STEP 1). The amount (dry matter basis) of supplemental feed (such as grain and hay) is determined (STEP 2) and then subtracted from the expected total DMI to "estimate" pasture DMI (Step 3).

STEP 1: Predict Dry Matter Demand (in pounds, lb)

The first step in predicting dry matter intake is to estimate dry matter demand. Dry matter demand is the expected dry matter intake for a class of animal. Dry matter demand is generally based on class of animal, stage of life and production (for example, lactating, reproductive status, or growth stage) and body weight. As stated previously, estimations for dry matter demand do not account for the numerous physiological, environmental, and management factors that alter dry matter demand, and, therefore, should be used as general estimates.

Option 1: Use expected total DMI from referenced tables or published data.

You can determine the pounds (lb) of dry matter demand by using the predicted dry matter intake (DMI) values in the nutrient requirement tables in the Nutrient Requirements of Domestic Animals Series published by NRC. NOP has developed guidance tables adapted from the NRC nutrient requirement tables [*NOP Dry Matter Demand Tables for Classes of Beef Cattle* and *NOP Dry Matter Demand Tables for Classes of Dairy Cattle*]. These documents can be found at www.ams.usda.gov/NOP. The NOP guidance tables are a simplified and condensed version of the information from the NRC nutrient requirement tables. The NRC and NOP tables will give the same or similar values. The NRC publications are accessible online.

- *Nutrient Requirements of Beef Cattle* (7th Revised Edition, 2000, http://www.nap.edu/catalog.php?record_id=9791)
- *Nutrient Requirements of Dairy Cattle* (7th Revised Edition, 2001, http://www.nap.edu/catalog.php?record_id=9825)
- *Nutrient Requirements of Small Ruminants: Sheep, Goats, Cervids, and New World Camelids* (2007, http://www.nap.edu/catalog.php?record_id=11654)

Producers may increase or decrease the dry matter demand value in published data or tables to account for various environment and management factors. If an adjustment is made, the reasons for the adjustment should be documented on the DMI Calculation Worksheet.

EXAMPLE: A 500 lb beef replacement heifer with an expect mature weight of approximately 1,000 lb and an average daily gain of 1.0 lb will have a dry matter demand of 14.6 lb per day.

Option 2: Use a % body weight value to determine dry matter demand for the class of animal.

1) Determine the average weight for the class of animal.

2) Determine the DMI % Body Weight Value for the class and stage of production of animal.

   This can be determined from reference tables or published data. Depending on the quality of diet, breed and size of the animal, and energy expenditure of the animal (pounds of milk produced), a mature beef cow, for example, will consume 1-3% of her body weight, while a mature dairy cow will consume 2.5-4.5% of her body weight.

3) Calculate dry matter demand using the following formula:

   Dry Matter Demand (lb) = Body Weight (lb) x (DMI % Body Weight Value/100 lb)

EXAMPLE: Lactating dairy cows weighing an average of 1200 lb will consume approximately 3.0% of their body weight in dry matter intake daily. Thus, the dry matter demand is approximately 36 lb of dry matter per day for that class of animal.

Dry Matter Demand (lb) = 1200 x (3.0/100) = 36 lb

STEP 2: Determine Dry Matter Intake from Feed Sources Other than Forage Grazed from Pasture (for example, hay and grain)

To do this you will need to know the percent dry matter of the feed source in order to convert the pounds of feed consumed on an as-fed basis to a dry matter basis.

Feed composition information, including dry matter content, is available from the following references/resources:

- Composition of Feeds, Nutrient Requirements of Domestic Animals Series, NRC (links above)
- United States-Canadian Tables of Feed Composition: Nutritional Data for the United States and Canadian Feeds, Third Revision (http://www.nap.edu/catalog.php?record_id=1713)
- Beef Magazine's 2009 Feed Composition Tables – http://beefmagazine.com/nutrition/feed-composition-tables/0301-feed-composition-tables_3/
- Various State Extension Services
- Feed Composition Library, Dairy One (http://www.dairyone.com/Forage/FeedComp/)
- Feed Library, The Samuel Roberts Noble Foundation (http://www.noble.org/Ag/FeedLib/Index.aspx)

General assumptions for the percent dry matter are as follows:

- Grain = 89% dry matter
- Dry hay = 90% dry matter
- Grain Silage = 25-35% dry matter
- Haylage/Baleage = 35-60% dry matter

Note: If possible, conduct a forage analysis of your feed to determine the actual dry matter content. Use actual dry matter values rather than reference/published values, especially for fresh and ensiled feeds. Fresh and ensiled feeds contain more moisture and therefore can be widely variable. Reference/published values are more accurate for dryer feeds (for example, hay and grain). Using incorrect dry matter values could result in overestimating pasture intake.

EXAMPLE:

Feed Source	lb, as-fed	x	Dry Matter, %	=	Lb, dry matter
Hay	5	x	90/100		4.5
Grain	11	x	89/100		9.79
Total lb DMI from Feed Sources other than Pasture =					14.29

STEP 3: Determine Dry Matter Intake from Pasture

Option 1: Estimate dry matter intake from pasture by subtracting dry matter intake from other feed sources from the dry matter demand.

EXAMPLE:

Estimated dry matter demand per animal (lb):	36
- total lb DMI from other feed sources	-14.29
= estimated pasture DMI	=21.71 (lb)

Option 2: Determine actual DMI from pasture by field measurements.

Producers may also determine the actual amounnt of intake from pasture through paddock/field measurements. Guidance for actual pasture measurements can be obtained from local, regional, and state experts mentioned above as well as from NOP Actual DMI Determination (*in development*).

STEP 4: Calculate the percentage of dry matter intake to determine if your ruminant animals meet the requirement of 30% dry matter intake from pasture during the grazing season.

% Dry matter intake from pasture = (Estimated lb DMI from pasture divided by (÷) estimated dry matter demand (lb)) x 100

EXAMPLE:

% Dry matter intake from pasture = (21.71 ÷ 36) x 100 = 60.31% **(✓ Requirement is met)**

NATIONAL ORGANIC PROGRAM
Dry Matter Demand Tables For Classes of Dairy Cattle

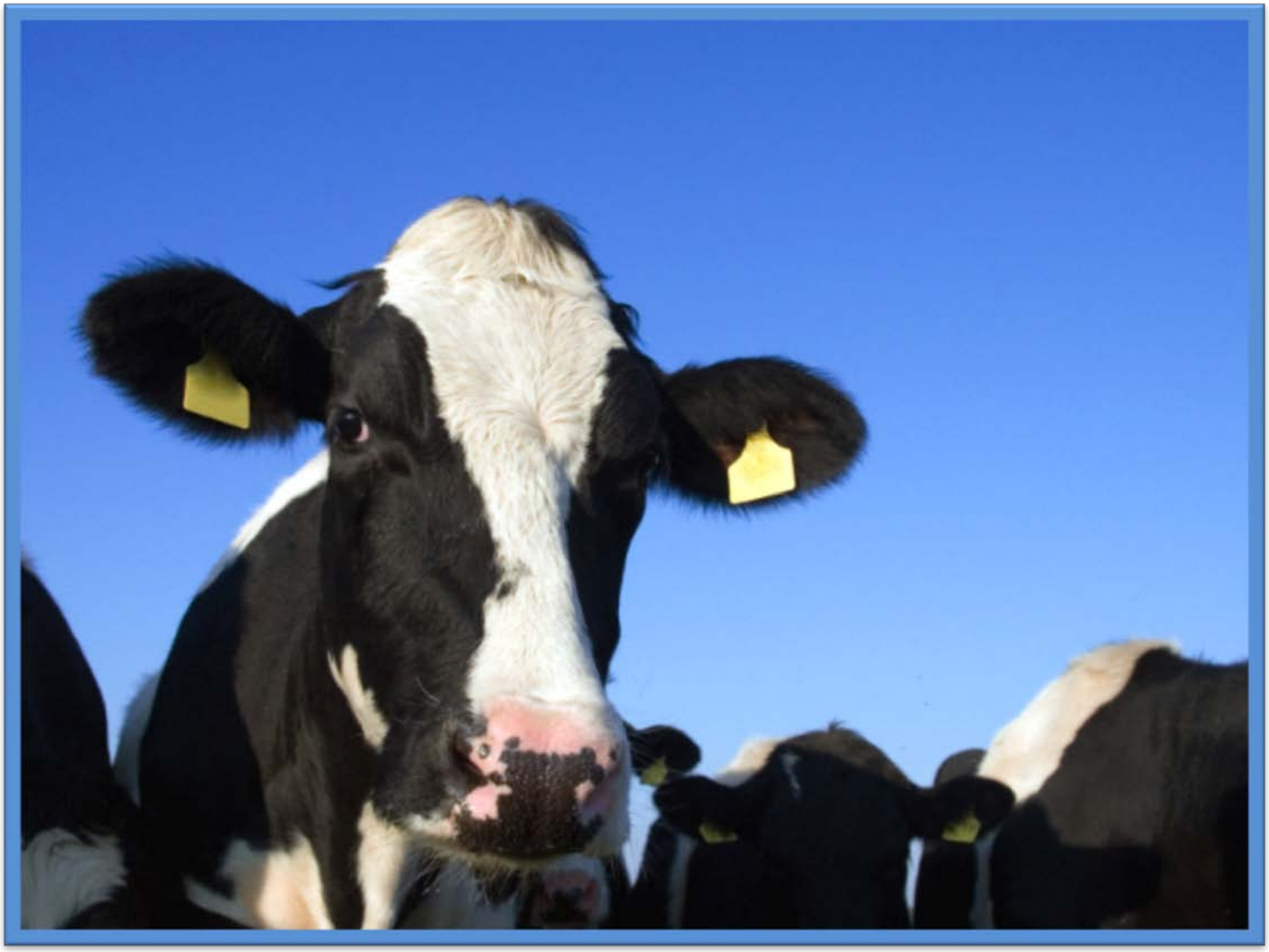

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Table 1 - 1: Daily Dry Matter Demand Requirements in Kilograms and Pounds
Early Lactation *Small Breed Dairy Cows
15 - 30 Kilograms or 33 - 67 Pounds Daily Milk Production
78% Total Digestible Nutrients Diet

Daily Milk Production (kg)	Milk Fat (%)	DMD (kg)	Daily Milk Production (lb)	Milk Fat (%)	DMD (lb)
15	4.0	9.4	33.07	4.0	20.72
15	4.5	9.7	33.07	4.5	21.38
15	5.0	9.9	33.07	5.0	21.83
30	4.0	12.9	66.14	4.0	28.44
30	4.5	13.5	66.14	4.5	29.76
30	5.0	14	66.14	5.0	30.86

Abbreviations used in table:
DMD = Dry Matter Demand, kg = Kilogram, lb = Pound

*Small Breed Live Weight = 454 Kilograms or 1,001 Pounds

Adapted from: "Table 14-1," from *Nutrient Requirements of Dairy Cattle: Seventh Revised Edition, 2001* , by Subcommittee on Dairy Cattle Nutrition, Committee on Animal Nutrition, National Research Council, 2001, Washington, D.C.: National Academies Press. Copyright 2001 by National Academy of Sciences.

Table 1 - 2: Daily Dry Matter Demand Requirements in Kilograms and Pounds
Mid Lactation *Small Breed Dairy Cows
20 - 40 Kilograms or 44 - 88 Pounds Daily Milk Production
78% Total Digestible Nutrients Diet

Daily Milk Production (kg)	Milk Fat (%)	DMD (kg)	Daily Milk Production (lb)	Milk Fat (%)	DMD (lb)
20	3.0	16	44.09	3.0	35.27
20	3.5	16.5	44.09	3.5	36.38
20	4.0	17	44.09	4.0	37.48
30	3.0	19.5	66.14	3.0	42.99
30	3.5	20.3	66.14	3.5	44.75
30	4.0	21.1	66.14	4.0	46.52
40	3.0	23.1	88.18	3.0	50.93
40	3.5	24.2	88.18	3.5	53.35
40	4.0	25.2	88.18	4.0	55.56

Abbreviations used in table:
DMD = Dry Matter Demand, kg = Kilogram, lb = Pound

*Small Breed Live Weight = 454 Kilograms or 1,001 Pounds

Adapted from: "Table 14-2," from *Nutrient Requirements of Dairy Cattle: Seventh Revised Edition, 2001* , by Subcommittee on Dairy Cattle Nutrition, Committee on Animal Nutrition, National Research Council, 2001, Washington, D.C.: National Academies Press. Copyright 2001 by National Academy of Sciences.

Table 1 - 3: Daily Dry Matter Demand Requirements in Kilograms and Pounds
Mid Lactation *Small Breed Dairy Cows
10 - 30 Kilograms or 22 - 66 Pounds Daily Milk Production
68% Total Digestible Nutrients Diet

Daily Milk Production (kg)	Milk Fat (%)	DMD (kg)	Daily Milk Production (lb)	Milk Fat (%)	DMD (lb)
10	4.0	12.4	22.05	4.0	27.34
10	4.5	12.7	22.05	4.5	28.00
10	5.0	12.9	22.05	5.0	28.44
20	4.0	16	44.09	4.0	35.27
20	4.5	16.5	44.09	4.5	36.38
20	5.0	17	44.09	5.0	37.48
30	4.0	19.5	66.14	4.0	42.99
30	4.5	20.3	66.14	4.5	44.75
30	5.0	21.1	66.14	5.0	46.52

Abbreviations used in table:
DMD = Dry Matter Demand, kg = Kilogram, lb = Pound

*Small Breed Live Weight = 454 Kilograms or 1,001 Pounds

Adapted from: "Table 14-3," from *Nutrient Requirements of Dairy Cattle: Seventh Revised Edition, 2001* , by Subcommittee on Dairy Cattle Nutrition, Committee on Animal Nutrition, National Research Council, 2001, Washington, D.C.: National Academies Press. Copyright 2001 by National Academy of Sciences.

Table 1 - 4: Daily Dry Matter Demand Requirements in Kilograms and Pounds
Early Lactation *Large Breed Dairy Cows
20 - 40 Kilograms or 44 - 89 Pounds Daily Milk Production
78% Total Digestible Nutrients Diet

Daily Milk Production (kg)	Milk Fat (%)	DMD (kg)	Daily Milk Production (lb)	Milk Fat (%)	DMD (lb)
20	3.0	12	44.09	3.0	26.46
20	3.5	12.4	44.09	3.5	27.34
20	4.0	12.7	44.09	4.0	28.00
30	3.0	14	66.14	3.0	30.86
30	3.5	14.5	66.14	3.5	31.97
30	4.0	15.1	66.14	4.0	33.29
40	3.0	16	88.18	3.0	35.27
40	3.5	16.7	88.18	3.5	36.82
40	4.0	17.4	88.18	4.0	38.36

Abbreviations used in table: DMD = Dry Matter Demand, kg = Kilogram, lb = Pound

*Large Breed Live Weight = 680 Kilograms or 1,499 Pounds

Adapted from: "Table 14-4," from *Nutrient Requirements of Dairy Cattle: Seventh Revised Edition, 2001* , by Subcommittee on Dairy Cattle Nutrition, Committee on Animal Nutrition, National Research Council, 2001, Washington, D.C.: National Academies Press. Copyright 2001 by National Academy of Sciences.

Table 1 - 5: Daily Dry Matter Demand Requirements in Kilograms and Pounds
Mid Lactation *Large Breed Dairy Cows
35 - 55 Kilograms or 77 - 121 Pounds Daily Milk Production
78% Total Digestible Nutrients Diet

Daily Milk Production (kg)	Milk Fat (%)	DMD (kg)	Daily Milk Production (lb)	Milk Fat (%)	DMD (lb)
35	3.0	22.7	77.16	3.0	50.04
35	3.5	23.6	77.16	3.5	52.03
35	4.0	24.5	77.16	4.0	54.01
45	3.0	25.7	99.21	3.0	56.66
45	3.5	26.9	99.21	3.5	59.30
45	4.0	28.1	99.21	4.0	61.95
55	3.0	28.7	121.25	3.0	63.27
55	3.5	30.2	121.25	3.5	66.58
55	4.0	31.7	121.25	4.0	69.89

Abbreviations used in table: DMD = Dry Matter Demand, kg = Kilogram, lb = Pound

*Large Breed Live Weight = 680 Kilograms or 1,499 Pounds

Adapted from: "Table 14-5," from *Nutrient Requirements of Dairy Cattle: Seventh Revised Edition, 2001* , by Subcommittee on Dairy Cattle Nutrition, Committee on Animal Nutrition, National Research Council, 2001, Washington, D.C.: National Academies Press. Copyright 2001 by National Academy of Sciences.

Table 1 - 6: Daily Dry Matter Demand Requirements in Kilograms and Pounds
Mid Lactation *Large Breed Dairy Cows
25 - 45 Kilograms or 55 - 99 Pounds Daily Milk Production
68% Total Digestible Nutrients Diet

Daily Milk Production (kg)	Milk Fat (%)	DMD (kg)	Daily Milk Production (lb)	Milk Fat (%)	DMD (lb)
25	3.0	19.6	55.12	3.0	43.21
25	3.5	20.3	55.12	3.5	44.75
25	4.0	21	55.12	4.0	46.30
35	3.0	22.7	77.16	3.0	50.04
35	3.5	23.6	77.16	3.5	52.03
35	4.0	24.5	77.16	4.0	54.01
45	3.0	25.7	99.21	3.0	56.66
45	3.5	26.9	99.21	3.5	59.30
45	4.0	28.1	99.21	4.0	61.95

Abbreviations used in table:
DMD = Dry Matter Demand, kg = Kilogram, lb = Pound

*Large Breed Live Weight = 680 Kilograms or 1,499 Pounds

Adapted from: "Table 14-6," from *Nutrient Requirements of Dairy Cattle: Seventh Revised Edition, 2001* , by Subcommittee on Dairy Cattle Nutrition, Committee on Animal Nutrition, National Research Council, 2001, Washington, D.C.: National Academies Press. Copyright 2001 by National Academy of Sciences.

Table 1 - 7: Daily Dry Matter Demand Requirements in Kilograms and Pounds
*Large Breed Dry Cows, 240 - 279 Days Pregnant
Calf Weight 45 Kilograms or 99 Pounds
Average Daily Gain, .67 Kilogram or 1.48 Pounds

Current Dry Cow Body Weight with Conceptus (kg)	Days Pregnant	DMD (kg/day)	Current Dry Cow Body Weight with Conceptus (lb)	Days Pregnant	DMD (lb/day)
730	240	14.4	1609.4	240	31.7
751	270	13.7	1655.7	270	30.2
757	279	10.1	1668.9	279	22.3

Abbreviations used in table:
DMD = Dry Matter Demand, kg = Kilogram, lb = Pound

*Large Breed Mature Weight = 680 Kilograms or 1,499 Pounds without Conceptus

Adapted from: "Table 14-9," from *Nutrient Requirements of Dairy Cattle: Seventh Revised Edition, 2001* , by Subcommittee on Dairy Cattle Nutrition, Committee on Animal Nutrition, National Research Council, 2001, Washington, D.C.: National Academies Press. Copyright 2001 by National Academy of Sciences.

Table 1 - 8: Daily Dry Matter Demand Requirements in Kilograms and Pounds
Transitioning, Second or Greater Lactation *Large Breed Cows, 270 Days Pregnant
Average Daily Gain, .3 Kilogram or .7 Pound
Conceptus Average Daily Gain, .66 Kilogram or 1.45 Pounds

Current Body Weight with Conceptus (kg)	Days Pregnant	DMD (kg/day)	Current Body Weight with Conceptus (lb)	Days Pregnant	DMD (lb/day)
751	270	13.7	1,655.7	270	30.2

Abbreviations used in table:
DMD = Dry Matter Demand, kg = Kilogram, lb = Pound

*Large Breed Mature Weight = 680 Kilograms or 1,499 Pounds

Adapted from: "Table 14-11," from *Nutrient Requirements of Dairy Cattle: Seventh Revised Edition, 2001* , by Subcommittee on Dairy Cattle Nutrition, Committee on Animal Nutrition, National Research Council, 2001, Washington, D.C.: National Academies Press. Copyright 2001 by National Academy of Sciences.

Table 1 - 9: Daily Dry Matter Demand Ranges in Kilograms and Pounds
*Small and *Large Breed Non-Bred Heifers

Small Breed Current Body Weight (kg)	Daily DMD Range (kg) w/ .3-.8 kg Daily Gain		DMD Daily Average (kg)	Small Breed Current Body Weight (lb)	Daily DMD Range (lb) w/ .7-1.8 lb Daily Gain		DMD Daily Average (lb)
	DMD Minimum	DMD Maximum			DMD Minimum	DMD Maximum	
100	3.0	3.1	3.1	220.5	6.6	6.8	6.7
150	4.0	4.2	4.1	330.7	8.8	9.3	9.1
200	5.0	5.2	5.1	440.9	11.0	11.5	11.3
250	5.9	6.2	6.1	551.2	13.0	13.7	13.4
300	6.2	7.1	6.7	661.4	13.7	15.7	14.7

Large Breed Current Body Weight (kg)	Daily DMD Range (kg) w/ .5-1.1 kg Daily Gain		DMD Daily Average (kg)	Large Breed Current Body Weight (lb)	Daily DMD Range (lb) w/ 1.1-2.4 lb Daily Gain		DMD Daily Average (lb)
	DMD Minimum	DMD Maximum			DMD Minimum	DMD Maximum	
150	4.1	4.2	4.2	330.7	9.0	9.3	9.2
200	5.1	5.2	5.2	440.9	11.2	11.5	11.4
250	6.0	6.2	6.1	551.2	13.2	13.7	13.5
300	6.9	7.1	7.0	661.4	15.2	15.7	15.5
350	7.7	8.0	7.9	771.6	17.0	17.6	17.3
400	8.5	8.8	8.7	881.7	18.7	19.4	19.1

Abbreviations used in table:
DMD = Dry Matter Demand, kg = Kilogram, lb = Pound, w = with

*Small Breed Mature Weight = 450 Kilograms or 992 Pounds
*Large Breed Mature Weight = 650 Kilograms or 1,433 Pounds

Adapted from: "Tables 14-12 and 14-13," from *Nutrient Requirements of Dairy Cattle: Seventh Revised Edition, 2001* , by Subcommittee on Dairy Cattle Nutrition, Committee on Animal Nutrition, National Research Council, 2001, Washington, D.C.: National Academies Press. Copyright 2001 by National Academy of Sciences.

Table 1 - 10: Daily Dry Matter Demand Ranges in Kilograms and Pounds
*Small and *Large Breed Bred Heifers

Small Breed Current Body Weight (kg)	Daily DMD Range (kg) w/ .3 -.9 kg Daily Gain		DMD Daily Average (kg)	Small Breed Current Body Weight (lb)	Daily DMD Range (lb) w/ .7 - 2.0 lb Daily Gain		DMD Daily Average (lb)
	DMD Minimum	DMD Maximum			DMD Minimum	DMD Maximum	
300	7.6	7.7	7.7	661.4	16.8	17.0	16.9
350	8.5	8.7	8.6	771.6	18.7	19.2	19.1
400	9.4	9.6	9.5	881.8	20.7	21.2	21.0
450	10.3	10.5	10.4	992.1	22.7	23.1	23.0

Large Breed Current Body Weight (kg)	Daily DMD Range (kg) w/ .5 - 1.1 kg Daily Gain		DMD Daily Average (kg)	Large Breed Current Body Weight (lb)	Daily DMD Range (lb) w/ 1.1 - 2.4 lb Daily Gain		DMD Daily Average (lb)
	DMD Minimum	DMD Maximum			DMD Minimum	DMD Maximum	
450	10.3	10.5	10.4	992.1	22.7	23.1	23.0
500	11.1	11.4	11.3	1102.3	24.5	25.1	24.9
550	12.0	12.2	12.1	1212.5	26.5	26.9	26.8
600	12.8	13.0	13.0	1322.8	28.2	28.7	28.6
650	13.6	13.8	13.8	1433	30.0	30.4	30.3

Abbreviations used in table:
DMD = Dry Matter Demand, kg = Kilogram, lb = Pound, w = with

*Small Breed Mature Weight = 450 Kilograms or 992 Pounds
*Large Breed Mature Weight = 650 Kilograms or 1,433 Pounds

Adapted from: "Tables 14-14 and 14-15," from *Nutrient Requirements of Dairy Cattle: Seventh Revised Edition, 2001* , by Subcommittee on Dairy Cattle Nutrition, Committee on Animal Nutrition, National Research Council, 2001, Washington, D.C.: National Academies Press. Copyright 2001 by National Academy of Sciences.

Table 1 - 11: Daily Dry Matter Demand Requirements in Kilograms and Pounds
Transitioning, Close-Up, First Lactation *Large Breed Heifers,
Average Daily Gain, .3 Kilogram or .7 Pound
Conceptus Average Daily Gain, .66 Kilogram or 1.45 Pounds

Current Body Weight with Conceptus (kg)	Days Pregnant	DMD (kg/day)	Current Body Weight with Conceptus (lb)	Days Pregnant	DMD (lb/day)
625	270	10.6	1377.9	270	23.4

Abbreviations used in table:
DMD = Dry Matter Demand, kg = Kilogram, lb = Pound

*Large Breed Mature Weight = 680 Kilograms or 1,499 Pounds

Adapted from: "Table 14-10," from *Nutrient Requirements of Dairy Cattle: Seventh Revised Edition, 2001* , by Subcommittee on Dairy Cattle Nutrition, Committee on Animal Nutrition, National Research Council, 2001, Washington, D.C.: National Academies Press. Copyright 2001 by National Academy of Sciences.

Table 1 - 12: Daily Dry Matter Demand Requirements in Kilograms or Grams and Pounds

Weaned Calves

Current Body Weight (kg)	Average Daily Gain (g)	DMD (kg/day)	Current Body Weight (lb)	Average Daily Gain (lb)	DMD (lb/day)
50	0	0.70	110.2	0.0	1.5
50	400	1.13	110.2	0.9	2.5
50	500	1.27	110.2	1.1	2.8
50	600	1.86	110.2	1.3	4.1
60	0	0.80	132.3	0.0	1.8
60	400	1.26	132.3	0.9	2.8
60	500	1.41	132.3	1.1	3.1
60	600	1.56	132.3	1.3	3.4
60	700	1.71	132.3	1.5	3.8
60	800	1.87	132.3	1.8	4.1
70	0	0.90	154.3	0.0	2.0
70	400	1.39	154.3	0.9	3.1
70	500	1.54	154.3	1.1	3.4
70	600	1.70	154.3	1.3	3.7
70	700	1.86	154.3	1.5	4.1
70	800	2.03	154.3	1.8	4.5
80	0	0.99	176.4	0.0	2.2
80	400	1.51	176.4	0.9	3.3
80	500	1.66	176.4	1.1	3.7
80	600	1.83	176.4	1.3	4.0
80	700	2.00	176.4	1.5	4.4
80	800	2.18	176.4	1.8	4.8
90	0	1.16	198.4	0.0	2.6
90	600	2.09	198.4	1.3	4.6
90	700	2.28	198.4	1.5	5.0
90	800	2.48	198.4	1.8	5.5
90	900	2.68	198.4	2.0	5.9
100	0	1.25	220.5	0.0	2.8
100	600	2.22	220.5	1.3	4.9
100	700	2.42	220.5	1.5	5.3
100	800	2.63	220.5	1.8	5.8
100	900	2.84	220.5	2.0	6.3

Abbreviations used in table:
DMD = Dry Matter Demand, kg = Kilogram, lb = Pound

Adapted from: "Table 10-4," from *Nutrient Requirements of Dairy Cattle: Seventh Revised Edition, 2001* , by Subcommittee on Dairy Cattle Nutrition, Committee on Animal Nutrition, National Research Council, 2001, Washington, D.C.: National Academies Press. Copyright 2001 by National Academy of Sciences.

NATIONAL ORGANIC PROGRAM
Dry Matter Demand Tables
For Classes of Beef Cattle

Photo courtesy of USDA-NRCS

Adapted from: "Nutrient Requirement Tables," from Nutrient Requirements of Beef Cattle: Seventh Revised Edition: Update 2000, by Subcommittee on Beef Cattle Nutrition, Committee on Animal Nutrition, National Research Council, 1996, Washington, D.C.: National Academies Press. Copyright 1996 by National Academy of Sciences.

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BEEF CATTLE DRY MATTER INTAKE REQUIREMENTS

Table 2-1. Daily Dry Matter Demand Requirements in Pounds and Percent of Body Weight

Beef Cows

1,000 - 1,400 lb Mature Body Weights and 10 - 30 lb of Milk Production/Day

	Months Since Calving												
	1	2	3	4	5	6	7	8	9	10	11	12	Average
1,000 lb Mature Weight, 10 lb/d Peak Milk													
DMD, lb	21.60	22.10	23.00	22.50	22.10	21.70	21.10	21.00	20.90	20.80	21.00	21.40	**21.60** lb
DMD as % Body Weight	2.16	2.21	2.30	2.25	2.21	2.17	2.11	2.10	2.09	2.08	2.10	2.14	**2.16** % Body Weight
1,000 lb Mature Weight, 20 lb/d Peak Milk													
DMD, lb	24.00	25.00	25.40	24.40	23.50	22.70	21.10	21.00	20.90	20.80	21.00	21.40	**22.60** lb
DMD as % Body Weight	2.40	2.50	2.54	2.44	2.35	2.27	2.11	2.10	2.09	2.08	2.10	2.14	**2.26** % Body Weight
1,000 lb Mature Weight, 30 lb/d Peak Milk													
DMD, lb	26.40	27.80	27.80	26.40	24.90	23.70	21.10	21.00	20.90	20.80	21.00	21.40	**23.60** lb
DMD as % Body Weight	2.64	2.78	2.78	2.64	2.49	2.37	2.11	2.10	2.09	2.08	2.10	2.14	**2.36** % Body Weight
1,200 lb Mature Weight, 10 lb/d Peak Milk													
DMD, lb	24.40	24.90	26.00	25.60	25.10	24.80	24.20	24.10	24.00	23.90	24.10	24.60	**24.64** lb
DMD as % Body Weight	2.03	2.08	2.17	2.13	2.09	2.07	2.02	2.01	2.00	1.99	2.01	2.05	**2.05** % Body Weight
1,200 lb Mature Weight, 20 lb/d Peak Milk													
DMD, lb	26.80	27.80	28.40	27.40	26.50	25.70	24.20	24.10	24.00	23.90	24.10	24.60	**25.63** lb
DMD as % Body Weight	2.23	2.32	2.37	2.28	2.21	2.14	2.02	2.01	2.00	1.99	2.01	2.05	**2.14** % Body Weight
1,200 lb Mature Weight, 30 lb/d Peak Milk													
DMD, lb	29.20	30.60	30.80	29.40	27.90	26.70	24.20	24.10	24.00	23.90	24.10	24.60	**26.63** lb
DMD as % Body Weight	2.43	2.55	2.57	2.45	2.33	2.23	2.02	2.01	2.00	1.99	2.01	2.05	**2.22** % Body Weight
1,400 lb Mature Weight, 10 lb/d Peak Milk													
DMD, lb	27.10	27.60	28.90	28.50	28.00	27.70	27.20	27.00	26.90	26.80	27.00	27.60	**27.53** lb
DMD as % Body Weight	1.94	1.97	2.06	2.04	2.00	1.98	1.94	1.93	1.92	1.91	1.93	1.97	**1.97** % Body Weight
1,400 lb Mature Weight, 10 lb/d Peak Milk													
DMD, lb	29.50	30.50	31.30	30.30	29.40	28.60	27.20	27.00	26.90	26.80	27.00	27.60	**28.51** lb
DMD as % Body Weight	2.11	2.18	2.24	2.16	2.10	2.04	1.94	1.93	1.92	1.91	1.93	1.97	**2.04** % Body Weight
1,400 lb Mature Weight, 10 lb/d Peak Milk													
DMD, lb	31.90	33.30	33.70	32.30	30.80	29.60	27.20	27.00	26.90	26.80	27.00	27.60	**29.51** lb
DMD as % Body Weight	2.28	2.38	2.41	2.31	2.20	2.11	1.94	1.93	1.92	1.91	1.93	1.97	**2.11** % Body Weight

Abbreviations used in table: DMD = Dry Matter Demand, kg = Kilogram, lb = Pound, d = day

Adapted from: "Tables 21, 22, and 23," from Nutrient Requirements of Beef Cattle: Seventh Revised Edition: Update 2000, by Subcommittee on Beef Cattle Nutrition, Committee on Animal Nutrition, National Research Council, 1996, Washington, D.C.: National Academies Press. Copyright 1996 by National Academy of Sciences.

Table 2-1. Daily Dry Matter Demand Requirements in Pounds and Percent of Body Weight
Pregnant Replacement Heifers
1,000 - 1,400 lb Mature Body Weights

	Months Since Conception									
	1	2	3	4	5	6	7	8	9	Average
1,000 lb Mature Weight										
DMD, lb	16.7	17.2	17.7	18.2	18.7	19.4	20.0	20.7	21.3	**18.88** lb
DMD as % Body Weight	1.67	1.72	1.77	1.82	1.87	1.94	2.00	2.07	2.13	**1.89** % Body Weight
1,100 lb Mature Weight										
DMD, lb	18.0	18.5	19.0	19.5	20.1	20.8	21.5	22.3	22.9	**20.29** lb
DMD as % Body Weight	1.64	1.68	1.73	1.77	1.83	1.89	1.95	2.03	2.08	**1.84** % Body Weight
1,200 lb Mature Weight										
DMD, lb	19.3	19.8	20.3	20.9	21.5	22.2	23.0	23.7	24.4	**21.68** lb
DMD as % Body Weight	1.61	1.65	1.69	1.74	1.79	1.85	1.92	1.98	2.03	**1.81** % Body Weight
1,300 lb Mature Weight										
DMD, lb	20.5	21.0	21.6	22.2	22.9	23.6	24.4	25.2	25.9	**23.03** lb
DMD as % Body Weight	1.58	1.62	1.66	1.71	1.76	1.82	1.88	1.94	1.99	**1.77** % Body Weight
1,400 lb Mature Weight										
DMD, lb	21.7	22.3	22.9	23.5	24.2	24.9	25.8	26.6	27.4	**24.37** lb
DMD as % Body Weight	1.55	1.59	1.64	1.68	1.73	1.78	1.84	1.90	1.96	**1.74** % Body Weight

Abbreviations used in table: DMD = Dry Matter Demand, lb = Pound

Adapted from: "Table 20," from Nutrient Requirements of Beef Cattle: Seventh Revised Edition: Update 2000, by Subcommittee on Beef Cattle Nutrition, Committee on Animal Nutrition, National Research Council, 1996, Washington, D.C.: National Academies Press. Copyright 1996 by National Academy of Sciences.

Table 2-3. Daily Dry Matter Demand Requirements in Pounds and Percent of Body Weight
Growing and Finishing Beef Cattle
1,000 - 1,400 lb at Finishing (Slaughter Stock) or Maturity (Replacement Heifers)

Current Body Weight, lb	Daily DMD	
	lb	% Body Weight
300	10.1	3.35
350	11.3	3.23
400	12.5	3.12
450	13.6	3.03
500	14.8	2.95
550	15.9	2.89
600	16.9	2.82
650	17.9	2.76
700	18.0	2.58
750	18.9	2.53
800	20.2	2.51
850	21.0	2.47
900	21.8	2.44
950	22.6	2.39
1,050	24.5	2.33
1,150	26.1	2.27

Abbreviations used in table: DMD = Dry Matter Demand, lb = Pound

Adapted from: "Tables 15, 16, 17, 18, and 19," from Nutrient Requirements of Beef Cattle: Seventh Revised Edition: Update 2000, by Subcommittee on Beef Cattle Nutrition, Committee on Animal Nutrition, National Research Council, 1996, Washington, D.C.: National Academies Press.

Dry Matter Intake (DMI) Calculation Worksheet Utilizing National Research Council (NRC) Referenced Values for Dry Matter Demand (DMD)

[Note: Use a separate worksheet for each livestock class and type (stage of production)]

Class/Stage of Production:

	Date			
	# of Animals			
	Average Weight			
A	**DMD** Source: NRC/NOP Table Value or Other _____			
	Other Feed Sources:			
	_____			
	lb, as fed			
	x % DM of Feed Source			
a	**= DMI, lb**			
	_____			
	lb, as fed			
	x % DM of Feed Source			
b	**= DMI, lb**			
	_____			
	lb, as fed			
	x % DM of Feed Source			
c	**= DMI, lb**			
	_____			
	lb, as fed			
	x % DM of Feed Source			
d	**= DMI, lb**			
B	**Total DMI from feed sources, lb = a+b+c+d**			
	% DMI from feed sources = (B/A)*100			
C	**Pasture DMI, lb = A - B**			
	% DMI from pastures = (C/A)*100			

Typical dry matter (DM) Content of Feed Sources:

- Grain = 89% dry matter
- Grain Silage = 25-35% dry matter
- Dry hay = 90% dry matter
- Haylage/Baleage = 35-60% dry matter

Ave. % DMI from Pasture Over the Grazing Season	
Meet Requirements?	

Dry Matter Intake (DMI) Calculation Worksheet Utilizing National Research Council (NRC) Referenced Values for Dry Matter Demand (DMD)

[Note: Use a separate worksheet for each livestock class and type (stage of production)]

Class/Stage of Production: Dairy Cow, Lactating [EXAMPLE]

	Date	1-May-09	10-Aug-09	1-Oct-09
	# of Animals	125	125	125
	Average Weight	1300	1300	1300
A	**DMD** Source: NRC/NOP Table Value or Other _____	31.97	52.03	52.03
	Other Feed Sources:			
	_____	corn	corn	corn
	lb, as fed	12	25	18
	x % DM of Feed Source	89	89	89
a	= **DMI, lb**	10.68	22.25	16.02
	_____		silage	hay
	lb, as fed		12	5
	x % DM of Feed Source		30	90
b	= **DMI, lb**		3.6	4.5
	_____		hay	
	lb, as fed		5	
	x % DM of Feed Source		90	
c	= **DMI, lb**		4.5	
	_____			
	lb, as fed			
	x % DM of Feed Source			
d	= **DMI, lb**			
B	**Total DMI from feed sources, lb = a+b+c+d**	10.68	30.35	20.52
	% DMI from feed sources = (B/A)*100	33.41	58.33	39.44
C	**Pasture DMI, lb = A - B**	21.29	21.68	31.51
	% DMI from pastures = (C/A)*100	66.59	41.67	60.56

Typical dry matter (DM) Content of Feed Sources:

- Grain = 89% dry matter
- Grain Silage = 25-35% dry matter
- Dry hay = 90% dry matter
- Haylage/Baleage = 35-60% dry matter

Ave. % DMI from Pasture Over the Grazing Season	56.27
Meet Requirements?	YES

Dry Matter Intake (DMI) Calculation Worksheet Using Body Weight Values

[Note: Use a separate worksheet for each livestock class and type (stage of production)]

Class/Stage of Production:

	Date			
	# of Animals			
	Average Weight			
	DMI %BW Value **Source: _____**			
A	**DMD** **= a * (b/100)**			
	Other Feed Sources:			
	_____			
	lb, as fed			
	x % DM of Feed Source			
c	**= DMI, lb**			
	_____			
	lb, as fed			
	x % DM of Feed Source			
d	**= DMI, lb**			
	_____			
	lb, as fed			
	x % DM of Feed Source			
e	**= DMI, lb**			
	_____			
	lb, as fed			
	x % DM of Feed Source			
f	**= DMI, lb**			
B	**Total DMI from feed sources, lb** **= c+d+e+f**			
	% DMI from feed sources **= (B/A)*100**			
C	**Pasture DMI, lb** **= A - B**			
	% DMI from pastures **= (C/A)*100**			

Typical dry matter (DM) Content of Feed Sources:

- Grain = 89% dry matter
- Dry hay = 90% dry matter
- Grain Silage = 25-35% dry matter
- Haylage/Baleage = 35-60% dry matter

Ave. % DMI from Pasture Over the Grazing Season	
Meet Requirements?	

Pasture Worksheet for Rotational/Stocking Grazing Systems

NOP 5017-6

[Note: Use a separate worksheet for each livestock class and type (stage of production)]

Class/Stage of Production: _____

Step 1: Estimating Forage/Pasture Demand

Forage/pasture demand is the amount of dry matter from forage/pasture required to feed the herd for one day. Producers can use this worksheet whether their animals are on pasture 100% or grazing 30% of DMI during the grazing season. Producers may use this worksheet in conjunction with the NOP Dry Matter Demand Calculation Worksheet. Producers should use the highest pasture DMI calculated over the grazing season when pasture demand is at its greatest. This will provide a buffer and make sure enough pasture is available during the grazing season. USDA, Natural Resources and Conservation Service (NRCS) uses the rule of thumb that grazing (rotational) animals need to have daily access to forage that is approximately 4% of their live weight (2.5% intake, 0.5% trampling loss, 1% buffer). This figure can be adjusted up if animals require more DMI due to size and/or milk production or down, if animals will receive supplements (grain and hay) during periods of low production.

Line A	**Average Weight of Animals** (lb)	
Line B	**Estimated DMI**[1] (as % of Body Weight) % BW/100	
Line C	**Daily Pasture DMI required for each animal**[1] (lb DM/head/day) = Line A x Line B or Pasture DMI from DMI Calculation Worksheet	
Line D	**Number of animals**	
Line E	**Total Forage Demand** (lb/day) = Line C x Line D	

EXAMPLE: Dairy Cows, Lactating (continued from DMI Worksheet Example)		
Line A	**Average Weight of Animals** (lb)	1300
Line B	**Estimated DMI**[1] (as % of Body Weight) % BW/100	3.42
Line C	**Daily Pasture DMI required for each animal**[1] (lb DM/head/day) = Line A x Line B or Pasture DMI from DMI Calculation Worksheet	44.46
Line D	**Number of animals**	125
Line E	**Total Forage Demand** (lb/day) = Line C x Line D	5557.5

[1]You can use the pasture DMI amounts calculated through the DMI Calculation Worksheet. (For example, from the NOP DMI Calculation Worksheet, the greatest pasture DMI over the grazing period for the lactating dairy cow herd was 31.51 lb. 31.51 lb pasture DMI divided by the herd average weight of 1300 lbs equals 2.42%. Add 1% to account for trampling loss and as a buffer. The final % body weight is 3.42% or a total of 44.46 lb of daily pasture DMI).

Abbreviations used on this page: DMI = dry matter intake, lb = pound(s), BW = body weight

Step 2: Estimating Forage Supply/Pasture Mass

This is the amount of forage/pasture dry matter that is predicted to be available. Actual pasture growth rates are extremely variable. Producers may use this worksheet intitially for planning purposes and then can use the worksheet again with actual forage height measurements.

(OPTION 1) For every inch of forage height in a pasture above a 2-inch residual, the following DM is available per acre:

Density	Pounds per Acre per inch*
Low	150-200
Medium	200-250
High	250-300

* Varies with plant density and species

(OPTION 2) USDA, NRCS Forage Availability Estimates:

Hay Yield (tons/acre/year)	Forage Availability (lb/acre/rotation)
4.5	1800
4.0	1600
3.5	1400
3.0	1200
2.5	1000
2.0	800

Line F	**Pre-grazing forage height** (in)	
Line G	**Post-grazing forage height** (in)	
Line H	**DM lb/acre/inch** (from Option 1 table)	
Line I	**Forage Supply** (DM; lb/acre/rotation)[1] Line F x Line G	

[1]Or you can use the NRCS Forage Availability Estimate

EXAMPLE:		
Line F	**Pre-grazing forage height** (in)	8
Line G	**Post-grazing forage height** (in)	2
Line H	**DM lb/acre/inch**	250
Line I	**Forage Supply** (DM; lb/acre/rotation)[1] Line F x Line G	1500

[1]Or you can use the NRCS Forage Availability Estimate

Abbreviations used on this page: NRCS = Natural Resources and Conservation Service, DMI = dry matter intake, lb = pound(s), in = inches, DM = dry matter

Step 3: Select Residency Period

This is the amount of time livestock will remain on a particular paddock. NRCS recommends 1-2 days for lactating dairy cows, dairy sheep and goats, and growing steers; 3-7 days for all other livestock. NRCS also recommends that to maximize harvest efficiency, producers should use the shortest residency period indicated for the type of livestock operation.

Line J	**Residency Period** (days)	

EXAMPLE:		
Line J	**Residency Period** (days)	1

Step 4: Determine Paddock Size

Paddock size is based on meeting total forage/pasture demand for the number of days of grazing (residency period).

Line E	**Total Forage Demand** (lb/day)	
Line I	**Forage Supply** (DM; lb/acre/rotation)	
Line J	**Residency Period** (days)	
Line K	**Paddock Size** (acres) (Line E ÷ Line H) x Line I	

EXAMPLE:		
Line E	**Total Forage Demand** (lb/day)	5557.5
Line I	**Forage Supply** (DM; lb/acre/rotation)	1500
Line J	**Residency Period** (days)	1
Line K	**Paddock Size** (acres) (Line E ÷ Line H) x Line I	3.71

Abbreviations used on this page: DM = dry matter, lb = pound(s)

Step 5: Calculate the Number of Paddocks

This is the number of paddocks required based on meeting the longest regrowth interval recommended (i.e., 30 days).

Line L	**Regrowth interval** (days)	
Line J	**Residency Period** (days)	
Line M	**Number of Paddocks Needed** (with a +1 buffer)	

EXAMPLE:		
Line L	**Regrowth interval** (days)	30
Line J	**Residency Period** (days)	1
Line M	**Number of Paddocks Needed** (with a +1 buffer)	31

Step 6: Calculate the Total Number of Acres Needed

Line K	**Paddock Size** (acres)	
Line M	**Number of Paddocks Needed**	
Line N	**Total acres** Line J x Line L	

EXAMPLE:		
Line K	**Paddock Size** (acres)	3.71
Line M	**Number of Paddocks Needed**	31
Line N	**Total acres** Line J x Line L	114.86

This worksheet was modeled after/adapted from the Natural Resources and Conservation Service (NRCS)-Wisconsin *Prescribed/Managed Grazing Plan Worksheet* .

Instruction
Five Steps to Organic Certification

1. Purpose

This document provides producers and handlers seeking to comply with the National Organic Program (NOP) regulations with instructions for becoming certified.

2. Scope

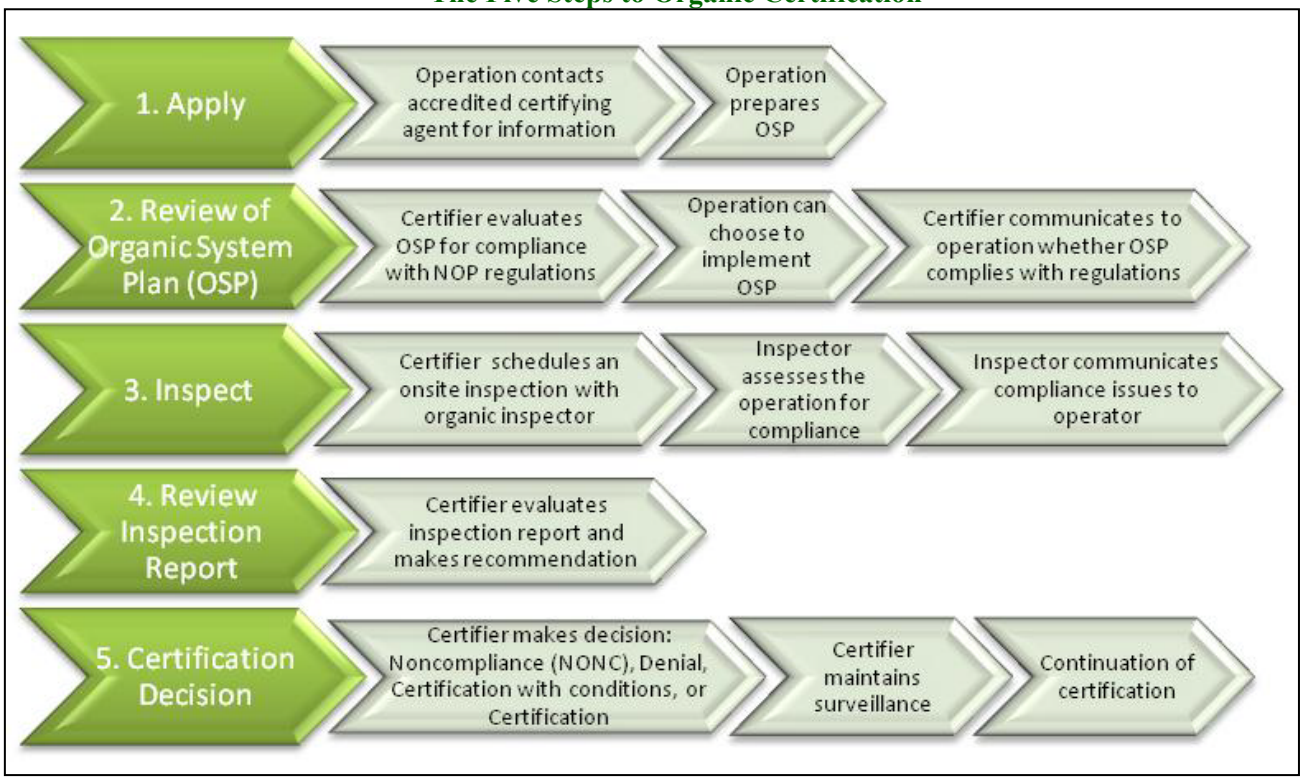
This instruction applies to producers and handlers seeking organic certification and Accredited Certifying Agents (ACAs).

3. The Organic Certification Process

The organic certification process includes five steps:

1. Application and development of an Organic System Plan (OSP) by the producer or handler of an operation seeking certification,
2. Implementation of the Organic System Plan by the operation and review of an Organic System Plan by the certifying agent,
3. Inspection of the operation seeking certification to ensure compliance with NOP regulations,
4. Review of the inspection report by the certifying agent, and
5. Decision on certification by the certifying agent.

The Five Steps to Organic Certification



The Organic System Plan serves as the foundation of this process. The Preamble to the Final Rule describes the Organic System Plan as an agreement central to certification that "must be negotiated, enacted, and amended through an informed dialogue between certifying agent and producer or handler [that] must be responsive to the unique characteristics of each operation". The Organic System Plan is a written plan specific to the particular operation type (crop production, livestock production, wild crop, or handling). The Organic System Plan is the central document that details how organic producers and handlers will achieve and maintain compliance with all applicable NOP regulations under 7 CFR 205.

Step 1: Application

First, a producer or handler interested in becoming certified contacts an accredited certifying agent (also termed ACA or certifying agent). The certifying agent provides information concerning their application process including any fees associated with organic certification. Next, the producer or handler completes the application which includes the Organic System Plan. The Organic System Plan must address all requirements identified in Subpart C: Organic Production and Handling Requirements (§ 205.200 – § 205.290) of the NOP regulations. The Organic System Plan includes the following areas:

1. A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed. For example:
   - Practices to protect and promote biodiversity
   - Procedures for notifying neighbors and road departments to prevent contamination of organic crops
   - Tillage practices
   - Cultivation practices
   - Crop rotation practices
   - Pest management practices
   - Procedures for obtaining organic seeds
   - Wild crop management practices
   - Livestock health care practices
   - Harvest and transportation practices including equipment cleanout to prevent contamination
   - Storage practices
   - Processing methods including equipment cleanout to prevent contamination
   - Labeling procedures
   - Procedures for obtaining organic ingredients

2. A list of each substance to be used as a production or handling input, indicating its composition, source, location(s) where it will be used, and documentation of commercial availability, as applicable. Note that some substances have restrictions for use. For example, in the case of pest management, preventive practices must be in place prior to using approved pest control inputs. Substances may include:
   - Compost
   - Manure
   - Soil amendments
   - Crop production aids
   - Pest control inputs
   - Livestock feed
   - Livestock feed additives and supplements
   - Livestock health care products
   - Post-harvest materials

- Processing aids
- Ingredients

3. A description of the monitoring practices and procedures to be performed and maintained, including the frequency with which they will be performed. This part of the Organic System Plan is designed to verify that the plan is effectively implemented and monitor the effectiveness of the organic practices to identify areas that need improvement. Organic producers and handlers can maintain organic integrity as well as maintain or improve the natural resources of the operation by monitoring the effectiveness of current practices. Monitoring methods may include:
   - Soil testing (e.g. testing for organic matter content)
   - Monitoring soil moisture or monitoring water quality
   - Product quality testing
   - Monitoring crop or pasture quality
   - Use of body conditioning scores for monitoring herd health
   - Somatic cell counts
   - Pest monitoring

4. A description of the recordkeeping system implemented to comply with the requirements established in §205.103. See *NOP 2602 Recordkeeping for Certified Operations* for more details on recordkeeping.

5. A description of the management practices and physical barriers established to prevent commingling of organic and nonorganic products on a split operation and to prevent contact of organic production and handling operations and products with prohibited substances. Management practices and physical barriers may include:
   - Buffer zones to prevent contamination
   - Establishment of a physical barrier (e.g. row of trees) to prevent drift of prohibited substances
   - Notification of neighbors and road departments
   - Procedures for identifying organic products during harvest, post harvest handling, shipping, processing and distribution

6. Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations. This may include:
   - Name(s) of previous certifying agent(s) and years applied
   - Results of previous applications for certification
   - Copies of all prior notices of noncompliance
   - Copies of all denials of certification
   - A description of actions taken to correct noncompliances plus evidence of corrective action
   - Other information deemed necessary by the certifier to verify compliance with the NOP regulations

Applications for organic certification also include the following items:

- Applicable fees charged by the certifying agent
- A signed operator agreement or affidavit, identifying the responsible party and appropriate business structure:
  - Sole proprietorship,
  - Partnership,
  - Limited Liability Company
  - Corporation, or
  - Non-profit organization.

Step 2: Review of the Organic System Plan

The certifying agent reviews the application for completeness and determines if the Organic System Plan appears to comply with the NOP regulations. If additional information is required by the certifier to complete the review, then the applicant will be asked to submit it.

The certifying agent verifies that all inputs and ingredients listed in the Organic System Plan comply with the NOP regulations. Certifying agents base their review of materials on different resources that provide a list of materials already reviewed for use in organic production. Examples of these resources include the Organic Materials Review Institute (OMRI) generic list, OMRI products list, and approved lists published by certifying agents such as the Washington State Department of Agriculture. The certifying agent will also verify that the materials are approved for the use as specified in an operation's Organic System Plan.

The certifying agent evaluates the application and the Organic System Plan and determines if the applicant appears to be able to comply with the NOP regulations. If the applicant appears to comply or may be able to comply with the organic standards, then the certifier may schedule an inspection. The certifying agent is responsible for clearly communicating the completeness of the application and whether the applicant's Organic System Plan appears to comply with the NOP regulations.

Step 3: Inspection

Upon approval of the application and the Organic System Plan, an inspection is scheduled of the operation. Inspections are NOT consulting visits. Inspectors may not provide advice to the producer or handler. The purpose of the onsite inspection is to:

- Assess whether the operation is in compliance or has the ability to comply with the NOP regulations.
- Verify that the Organic System Plan accurately reflects the activities of the operation.
- Ensure that prohibited substances have not been applied.

The inspection of each production unit, facility, and site which produces or handles organic products includes, but is not limited to the following:

- Evaluation of the Organic System Plan that the producer or handler maintains on-site. This evaluation assures that the producer or handler has an up-to-date plan, is implementing the plan, and that the plan is compliant with the NOP regulations.
- For organic crop producers – evaluation of soil management, adjoining land use, buffers, land history, production capacity of the land, seeds and planting stock used, crop rotation practices, pest control practices, harvest, labeling and shipping.
- For organic wild crop harvest producers – evaluation of designated harvest areas, sustainable harvest practices and procedures that ensure an adequate audit trail.
- For organic livestock producers – evaluation of soil management, adjoining land use, buffers, land history, seeds and planting stock used, health care practices, origin of livestock, livestock living conditions, evaluation of conditions for temporary confinement of livestock, and pasture management practices.
- For organic handlers – evaluation of receiving, processing, pest control, storage, labeling and shipping as well as practices to prevent commingling and contact with prohibited substances.
- Verification of the production or handling capacity of the operation.
- Reconciliation of the volume of organic products produced or received with the amount of organic products shipped, handled and sold.

Upon completion of the inspection, the inspector conducts an exit interview. At the exit interview, the inspector communicates compliance issues that were observed, and requests any additional information needed from the operation. This meeting is held with an authorized representative of the operation. The inspector will provide a receipt for any samples taken. The inspector sends the report to the certifying agent for review.

Step 4: Review of Inspection Report

Within a reasonable period of time, the certifying agent evaluates the inspection report, the Organic System Plan, the results of any analyses conducted, and any additional information provided. The certifying agent assesses the level of compliance and makes one of the following certification recommendations:

1. Certification
2. Certification with conditions
3. Noncompliance (NONC) (See *NOP 4002 Enforcement Policy* for further information)
4. Denial of certification. See 7 CFR §205.405 Denial of Certification.

The recommendation regarding certification is made by a person different from the person who makes the final decision regarding certification. The certifying agent may conduct additional onsite inspections to verify continued compliance with the NOP regulations. These inspections may be announced or unannounced.

Step 5: Certification Decision

If the operation complies or is capable of complying, the certifying agent issues an organic certificate. The certifying agent may issue certification with conditions for minor, non-violative issues (e.g. establishment of adequate buffer zone, development of compliant labels). Once certified, the operation's certification remains in effect until surrendered by the operation, or suspended or revoked by the certifying agent, the State organic program, or the Administrator of the USDA Agricultural Marketing Service.

4. Renewing Certification – the Annual Update

Once certified, the organic producer or organic handler is responsible for the following activities to maintain their certification:

Updates to the Organic System Plan

- An operation must annually submit to their certifying agent:
  - An updated Organic System Plan and fees,
  - Updated contact information,
  - An update on the correction of any previously identified minor noncompliances, and
  - Other information as deemed necessary by the certifying agent.

Additional Updates

- The NOP regulations require that certified operations notify their certifying agent prior to making any changes to their Organic System Plan that will affect compliance with the NOP regulations.
- Examples of situations that would require prompt notification of the certifier include:
  - Application of a prohibited substance to any field, production unit, product or site in organic production, regardless of whether it was a direct application or drift from neighboring area.
  - Use of a new type of fertilizer, crop production aid, or pest control material that is not included in their approved Organic System Plan.
  - Addition of acreage or another field to organic production.
  - Removal of a field or a portion of a field from organic production.
  - Development of a new label for the operator's organic products.
  - New processing or new handling of organic products not already specified in the operator's Organic System Plan.
  - A change in any practice, input, or procedure of a certified operation that may affect compliance with the NOP regulations.

The certifying agent conducts additional inspections for new fields and new facilities before an updated certificate is issued that includes those new fields or facilities.

5. Resources

Certification Resources: Organic System Plan Templates

In an effort to reduce variation in the interpretation of production and handling practice standards that may exist between certifying agents, the NOP encourages certifiers and operations seeking certification to take advantage of the information available from the Alternative Technology Transfer for Rural Areas (ATTRA) program a part of the National Sustainable Agriculture Information Service. These materials are free of charge and accessible via links from our website at www.ams.usda.gov/nop. Use of these resources is optional and voluntary. While certified operations and certifying agents are authorized to satisfy their compliance requirements through any set of procedures and formats sufficient for those purposes, these documents outline one method of best practices to assist in complying with the NOP regulations and are available in the following formats:

Workbook – Provides detailed descriptions of compliance requirements for each specific practice standard with extensive footnotes and resource contact list. This also includes an extensive list of compliance requirements formatted as questions that producers can fill out for crop and livestock operations.

Checklist – A simplified and streamlined version of compliance requirements formatted as questions for production and handling operations.

Organic system plan Technical Guidance – Provides a detailed description of compliance requirements formatted as completed organic system plan forms for livestock production, field and row crops, pasture and range systems, and market farms and greenhouses.

Templates and Documentation Forms –Templates include start-to-finish applications for crops, livestock, handling and renewals. Documentation forms include materials for discrete certification functions suitable for use in an organic system plan such as a field activity log, seed and planting stock procurement record, monthly organic egg sales record and clean truck affidavit.

Inspection Report Forms – Forms designed to correspond to the crops, livestock, and handling organic system plan compliance materials provided. These forms provide the questions that inspectors answer in order to provide a description of actual field/facility operations activities.

6. References

§ 205.2 Terms defined.

Certified operation. A crop or livestock production, wild-crop harvesting or handling operation, or portion of such operation that is certified by an accredited certifying agent as utilizing a system of organic production or handling as described by the Act and the regulations in this part.

Certifying agent. Any entity accredited by the Secretary as a certifying agent for the purpose of certifying a production or handling operation as a certified production or handling operation.

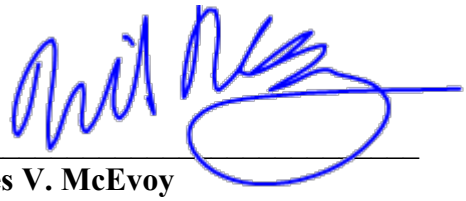
Inspection. The act of examining and evaluating the production or handling operation of an applicant for certification or certified operation to determine compliance with the Act and the regulations in this part.

Organic System Plan. A plan of management of an organic production or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in the Act and the regulations in subpart C of this part.

Additional references to Organic System Plans, the certification process and requirements can be found in the following sections of the NOP regulations:

§ 205.201 Organic production and handling system plan.
§ 205.400 General requirements for certification.
§ 205.401 Application for certification.
§ 205.402 Review of application.
§ 205.403 On-site inspections.
§ 205.404 Granting certification.
§ 205.406 Continuation of certification.

Approval



Miles V. McEvoy
Deputy Administrator
National Organic Program

Instruction
Recordkeeping

1. Purpose

This document outlines recordkeeping requirements under the NOP and provides examples of the types of records that should be maintained in conjunction with a certified operation's organic system plan (Organic System Plan).

2. Scope

This instruction applies to all accredited certifying agents (certifying agents) and certified operations.

3. Background

Section 205.103 of the NOP regulations requires that certified operations maintain records. Such records must fully disclose all activities in sufficient detail and in a format that can be readily understood, audited, and available for inspection. Certified operations must make records available for review by the NOP, the applicable State program's governing State official, and the certifying agent during normal business hours (§205.103(c)).

Section 205.201 requires certified operations to describe the recordkeeping system that will be implemented in accordance with Section 205.103 as part of the Organic System Plan for their operation. The Organic System Plan serves as a management and verification tool specific to the unique characteristics of each operation and should reflect the practices, procedures, inputs, and recordkeeping approach that will be used by an operation.

Maintenance of records enables certified operations to meet the requirements for continuing their organic certification. On an annual basis, certified operations must submit to their certifying agent an updated Organic System Plan, which includes documentation of any deviations in the practices, procedures, and inputs from what was specified in the previous year's Organic System Plan and any changes to the previous year's Organic System Plan that will be undertaken in the coming year (§205.406(a)(1)(i-ii)). Documenting such changes allows certifying agents to verify an operator's compliance with the NOP.

4. Policy

Certified operations can demonstrate compliance with the recordkeeping requirements under the NOP regulations by ensuring that the records maintained are up to date and sufficiently document the practices, procedures, and inputs used by the operation. Many certifying agents provide recordkeeping forms and sample Organic System Plans specific to crops, livestock, handling, and retail operations that may be suitable for documenting the activities and transactions of a certified operation. Certified operations and certifying agents can also consider the records listed when establishing their recordkeeping approach.

The records listed below are examples of records that can be used to demonstrate compliance with the recordkeeping requirements in the NOP regulations. Records maintained by the certified farm, ranch, handler or processor to demonstrate compliance with the NOP regulations need to be listed in the organic

system plan. Check with your certifying agent to ensure that you are maintaining appropriate records to demonstrate compliance. Other records not listed below may also be useful to verify compliance with the NOP regulations.

5. Organic Crop Producer Records

Seeds and Transplants – including cover crop and pasture seeds

- Receipts of seeds and transplants delivered to farm
- Invoices of seeds and transplants purchased
- Seed packages and labels
- Phone logs of attempts to obtain organic seeds and transplants
- Seed catalogs
- Letters from seed suppliers concerning the availability of organic seeds
- Organic certificates for organic seeds purchased
- For seed savers - Harvest records showing production of organic seed
- Seed treatment records
- Verification from supplier that non-organic seed is not genetically modified. This is only necessary for seeds that have commercially available GMO seeds (e.g. corn, soybeans, sugar beets)

Material Application Records

- Fertilizer and soil amendments - application records for fertilizers, manure, compost, soil amendments, and synthetic micronutrients
- Pest control products – application records for pesticides, acidifiers, spreader/stickers and other spray adjuvants
- Crop production aids – application records for foliar sprays, gibberellic acid, kelp or other approved products
- Invoices or receipts for all materials purchased including custom applicator invoices

Production Records

- Farm activity log
- Invoices for contracted services (e.g. seeding, mowing, spreading manure, etc.)
- Recommendations from pest consultants or other field persons
- Soil, water and tissue analysis reports
- Records of cultivation practices, weeding and planting dates
- Compost production records

Field History Records

- Cropping history or land use for the previous three years
- Material application records for the previous three years
- A copy of the organic certificate if the land was previously certified under another producer's certificate

- Lease Agreements
- Maps

Harvest and Storage Records

- Yield records (e.g. pounds harvested, weigh tickets, boxes harvested)
- Receipts from processor or warehouse for delivery of organic product
- Custom harvest records
- Clean truck affidavits

Sales Records

- Deposit records, ledgers, receipts
- Purchase orders
- Invoices
- Sales summaries from wholesalers or processors

6. Organic Livestock Producer Records

Origin of Livestock Records

- Breeding, birthing, and weaning records (e.g. calendar, chart, notebook, veterinary documents)
- Invoices, receiving records, and organic certification verification for all purchased animals

Feed Records

- Organic verification for all purchased feed, including grain, hay or silage (e.g. copy of organic certificates)
- Grain invoices with weights from your grain company
- Records of purchased feed supplements, and animal health care products
- Feed supplements and additive ingredient labels and purchase records
- Feeding records
- Harvest and storage records for feed grown on farm, feed labels, and organic certificates

Animal Health Care Records

- Loss/cull records
- Medication records
- Vaccinations
- Somatic cell counts

Livestock Living Conditions and Pasture Records

- Animal Identification records
- Grazing records
- Records of inclement weather

- Records of when animals were temporarily confined with description of what allowable condition existed
- Pasture rotation records

Production Records

- Date and weight at slaughter
- Milk production records
- Egg production records

7. Organic Handler & Processor Records

Receiving Records – records that verify that product received was organic and records that verify the amount of organic product received

- Organic certificate for each organic product or organic ingredient received
- Clean truck affidavit for bulk product– verifies that truck was cleaned prior to hauling organic products
- Invoices, purchase orders, bills of lading, scale tickets
- Handler organic certificates and contracts
- Certificates of analyses or Product Specification Sheets
- Raw product inventory reports and records
- Weigh tickets, receipts, and tags

Storage and Production Records – records that describe handling and processing activities

- Non-organic ingredient records
- Equipment clean-out logs
- Product specification sheets and ingredient inspection forms
- Recipes and product formulations
- Ingredient usage reports and production logs
- Quality Control reports
- Records as to reconditioning, shrinkage, and dumping, container, storage and processing area clean- out and reuse
- Purchased inputs, including ingredients, sanitizers, food contact substances, packaging, pest management materials
- Inventory reports for ingredients and finished products
- Packaging reports
- Pest control and sanitation logs

Shipping Records – records that verify type and amount of organic product shipped

- Pallet/tote tickets and scale tickets
- Certificates of analyses
- Purchase orders and sales journals
- Finished product inventory reports and records
- Shipping logs and bills of lading
- Export records and transaction certificates

- Sales, accounts payable, accounts receivable, and cash disbursement journals
- Broker's contracts and statements
- Phytosanitary certificates

8. References

§ 205.2 Terms defined.

Audit trail. Documentation that is sufficient to determine the source, transfer of ownership, and transportation of any agricultural product labeled as "100 percent organic," the organic ingredients of any agricultural product labeled as "organic" or "made with organic (specified ingredients)" or the organic ingredients of any agricultural product containing less than 70 percent organic ingredients identified as organic in an ingredients statement.

Certified operation. A crop or livestock production, wild-crop harvesting or handling operation, or portion of such operation that is certified by an accredited certifying agent as utilizing a system of organic production or handling as described by the Act and the regulations in this part.

Certifying agent. Any entity accredited by the Secretary as a certifying agent for the purpose of certifying a production or handling operation as a certified production or handling operation.

Inspection. The act of examining and evaluating the production or handling operation of an applicant for certification or certified operation to determine compliance with the Act and the regulations in this part.

Organic system plan. A plan of management of an organic production or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in the Act and the regulations in subpart C of this part.

Records. Any information in written, visual, or electronic form that documents the activities undertaken by a producer, handler, or certifying agent to comply with the Act and regulations in this part.

§ 205.103 Recordkeeping by certified operations.

(a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))."

(b) Such records must:

(1) Be adapted to the particular business that the certified operation is conducting;
(2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited;
(3) Be maintained for not less than 5 years beyond their creation; and
(4) Be sufficient to demonstrate compliance with the Act and the regulations in this part.

(c) The certified operation must make such records available for inspection and copying during normal business hours by authorized representatives of the Secretary, the applicable State program's governing State official, and the certifying agent.

§ 205.201 Organic production and handling system plan.

(a) The producer or handler of a production or handling operation, except as exempt or excluded under §205.101, intending to sell, label, or represent agricultural products as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent. An organic system plan must meet the requirements set forth in this section for organic production or handling. An organic production or handling system plan must include:

(1) A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed;
(2) A list of each substance to be used as a production or handling input, indicating its composition, source, location(s) where it will be used, and documentation of commercial availability, as applicable;
(3) A description of the monitoring practices and procedures to be performed and maintained, including the frequency with which they will be performed, to verify that the plan is effectively implemented;
(4) A description of the recordkeeping system implemented to comply with the requirements established in §205.103;
(5) A description of the management practices and physical barriers established to prevent commingling of organic and nonorganic products on a split operation and to prevent contact of organic production and handling operations and products with prohibited substances; and
(6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations.

(b) A producer may substitute a plan prepared to meet the requirements of another Federal, State, or local government regulatory program for the organic system plan: *Provided,* That, the submitted plan meets all the requirements of this subpart.

Approval

Miles V. McEvoy
Deputy Administrator
National Organic Program

Instruction
Organic Certificates

1. Purpose

This document specifies the components of an organic certificate so that certificates include consistent information. Organic certificates provide an auditable record of the organic certification status of a certified organic operation.

2. Scope

This instruction applies to accredited certifying agents (ACAs).

3. Background

In October 2006, the National Organic Standards Board (NOSB) made recommendations on the standardization of organic certificates. The NOSB recommendation requested that the NOP establish: 1) standardized terminology, 2) a standard organic certificate format, and 3) a clear reference to the NOP regulations on the organic certificate. In November 2007, the NOSB recommended that the NOP regulations be amended to require an expiration date on organic certificates.

The NOP regulations specify the information which must appear on organic certificates. 7 CFR § 205.404 (b) states that certificates specify the:

- name and address of the certified operation;
- effective date of certification;
- categories of organic operation, including crops, wild crops, livestock, or processed products produced by the certified operation; and
- name, address, and telephone number of the certifying agent.

Certifying agents are also required by § 205.406(d) to issue an "updated certificate" if "any of the information specified on the certificate of organic operation has changed" when an operation is continuing its certification. When an operation updates its organic system plan (OSP) with new fields, crops, farms, facilities, and/or processed products, this information should be accurately and specifically reflected in an updated certificate.

The "categories of organic operation" (crops, wild crops, livestock, or processed products) listed in the NOP rule are extremely broad. These broad categories do not provide buyers, inspectors, certifying agents, or regulatory officials with sufficient information to determine if an operation is certified to produce and/or handle the specific types of products offered for sale. Processed products listed on organic certificates do not consistently indicate the label category of the products (100% Organic, Organic, or Made with Organic (specified ingredients or food group(s))).

Many certifying agents provide organic certification under multiple organic standards such as the European organic standard or the Japanese organic standards. The name and address of the certifying agent is not sufficient to determine if the operation listed on the organic certificate is certified to the NOP regulations. Consistent, uniform, and specific information on NOP organic certificates will facilitate all certifying agents in their review of the certification status of organic products and certified organic operations.

4. Policy

New organic certificates can be issued after the certifying agent receives, evaluates, and approves the organic system plan, and completes the inspection to verify compliance. Updated organic certificates should be issued at least annually after the ACA receives, evaluates, and approves the annual update submitted by the certified operation.

NOP organic certificates should be issued in English and specify the:

- Name and address of the certified operation;
- Name, address, internet address, and phone number of the certifying agent;
- Effective date of the organic certification (the date the operation was initially certified to the NOP regulations);
- Issue date of the certificate;
- Anniversary date (the date when the certified operation is required to submit their next annual update);
- Scope of certification (e.g. crops, livestock, wild crops, handling);
- Certified organic products covered under the organic certification;
- Label classification for processed organic products –100% Organic, Organic and Made with Organic (specified ingredients or food groups);
- The statement - "Certified Organic under the US National Organic Program 7 CFR Part 205*"*; and
- The statement - "Once certified, a production or handling operation's organic certification continues in effect until surrendered, suspended or revoked".

Organic certificates are not transferable and are only applicable to the organic operation certified by the ACA. Organic certificates cannot be used to identify producers or land that is under transition to organic production. The use of expiration dates on organic certificates is not allowed under the NOP regulations.

5. References

§ 205.2 Terms defined.

Certification or certified. A determination made by a certifying agent that a production or handling operation is in compliance with the Act and the regulations in this part, which is documented by a certificate of organic operation.

Certified operation. A crop or livestock production, wild-crop harvesting or handling operation, or portion of such operation that is certified by an accredited certifying agent as utilizing a system of organic production or handling as described by the Act and the regulations in this part.

Certifying agent's operation. All sites, facilities, personnel, and records used by a certifying agent to conduct certification activities under the Act and the regulations in this part.

Records. Any information in written, visual, or electronic form that documents the activities undertaken by a producer, handler, or certifying agent to comply with the Act and regulations in this part**.**

§ 205.100 What has to be certified.

(a) Except for operations exempt or excluded in §205.101, each production or handling operation or specified portion of a production or handling operation that produces or handles crops, livestock, livestock products, or other agricultural products that are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part.

§ 205.404 Granting certification.

(a) Within a reasonable time after completion of the initial on-site inspection, a certifying agent must review the on-site inspection report, the results of any analyses for substances conducted, and any additional information requested from or supplied by the applicant. If the certifying agent determines that the organic system plan and all procedures and activities of the applicant's operation are in compliance with the requirements of this part and that the applicant is able to conduct operations in accordance with the plan, the agent shall grant certification. The certification may include requirements for the correction of minor noncompliances within a specified time period as a condition of continued certification.

(b) The certifying agent must issue a certificate of organic operation which specifies the:

(1) Name and address of the certified operation;
(2) Effective date of certification;
(3) Categories of organic operation, including crops, wild crops, livestock, or processed products produced by the certified operation; and
(4) Name, address, and telephone number of the certifying agent.

(c) Once certified, a production or handling operation's organic certification continues in effect until surrendered by the organic operation or suspended or revoked by the certifying agent, the State organic program's governing State official, or the Administrator.

§ 205.406 Continuation of certification.

...(b) Following the receipt of the information specified in paragraph (a) of this section, the certifying agent shall within a reasonable time arrange and conduct an on-site inspection of the certified operation pursuant to § 205.403: Except, That, when it is impossible for the certifying agent to conduct the annual on-site inspection following receipt of the certified operation's annual update of information, the certifying agent may allow continuation of certification and issue an updated certificate of organic operation on the basis of the information submitted and the most recent on-site inspection conducted during the previous 12 months: Provided, That, the annual on-site inspection, required pursuant to § 205.403, is conducted within the first 6 months following the certified operation's scheduled date of annual update….

(d) If the certifying agent determines that the certified operation is complying with the Act and the regulations in this part and that any of the information specified on the certificate of organic operation has changed, the certifying agent must issue an updated certificate of organic operation pursuant to § 205.404(b).

§ 205.501 General Requirements for accreditation.

Section 205.501 requires ACAs to maintain certification records and make them available to the NOP or SOP; maintain confidentiality regarding certain business information; accept certification decisions of all other ACAs; and annually submit to the NOP a list of all certified operations.

Approval

Miles V. McEvoy
Deputy Administrator
National Organic Program

United States Department of Agriculture
Agricultural Marketing Service
National Organic Program

1400 Independence Avenue SW.
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NOP 2604
Effective Date: July 13, 2010
Page 1 of 3

Instruction
Responsibilities of Certified Operations
Changing Certifying Agents

1 Purpose

This document establishes National Organic Program (NOP) policies and procedures for certified operations and accredited certifying agents (ACA's) when certified producers or handlers change to a new ACA.

2 Scope

These procedures apply in all situations where certified operations change certifiers, either as a result of a business decision or as a result of their current certifier losing accreditation.

3 References

7 CFR Part 205 Subpart E – Certification and Subpart F – Accreditation (Regulation)

4 Policy

4.1 Certification under the Regulation is not transferrable between ACAs. ACAs may not sell or otherwise transfer certified operation files or certificates to another ACA.

4.2 Certification and certificates issued to certified operations are not transferrable to new owners in cases of mergers, acquisitions, or other transfers of ownership of the certified operation. When there is a change in ownership of a certified operation, the certified operation must apply for and receive new certification from an ACA prior to selling, labeling, or representing products as organic.

4.3 When a certified operation wishes to change from their existing ACA to new ACA, the certified operation must complete an application and submit a complete organic systems plan (OSP) to the new ACA.

4.3.1 The new ACA must conduct a complete review and onsite inspection of the certified operation's OSP and ensure compliance with the NOP regulations prior to granting certification.

4.3.2 When changing ACAs, the certified operation must either maintain the prior certification according to the NOP regulations or surrender their prior certification in writing. Certified operations who are changing ACAs must maintain their current certification until they have been granted certification by the new ACA if they intend to continue to produce or sell products as organic.

4.3.3 If a certified operation applies for certification with a new ACA but does not maintain or surrender their prior certification in writing and the prior ACA issues a notice of noncompliance or proposed adverse action, the certified operation is still bound by the notice of noncompliance or proposed adverse actions of the prior certifying agent.

4.3.4 If the prior ACA issues a notice of suspension or revocation for failure to renew, pay fees, submit an updated OSP or any other technical or administrative noncompliance to the NOP Regulations, the certified operation must immediately cease the sale, labeling, and representation of products as organic until all noncompliances are resolved and eligibility for reinstatement is granted by the NOP.

4.4 For voluntary changes of certifying agent:

4.4.1 Certified operations that change ACAs voluntarily may not use up existing supplies of labels which identify their prior ACA on products they produce or handle.

4.5 For certified operations who change ACAs due to loss of a ACAs accreditation:

4.5.1 Organic operations certified by an ACA that goes out of business or loses its accreditation for any reason must apply for certification to another ACA within 60 days of the date of surrender, suspension, or revocation of accreditation of their ACA.

4.5.2 If an ACA discontinues service or loses its accreditation for any reason, all files for all operations certified by that ACA at that time must be transferred to the NOP pursuant to 205.501(c)(3). If a certified operation does not find a new certifying agent within 60 days**,** the NOP will reassign the supervision of the operation to another certifying agent who will manage the surrender or ongoing certification of the certified operation or initiate proposed adverse actions for failure to maintain certification under the NOP regulations.

4.5.3 ACAs who receive applications for certification from a certified operation affected by the loss of accreditation of their prior ACA may not grant ongoing certification on the basis of prior inspections or decisions by the prior certifying agent.

4.5.4 Certified operations that change ACAs due to their ACA going out of business may use existing supplies of labels for no more than 90 days beyond the date that the ACA discontinued service.

5 Procedures

5.1 To change an ACA, a certified organic operation must:

5.1.1 Submit an application for certification to another ACA as a new applicant;

5.1.2 Submit a complete OSP for the scope(s) of certification requested;

5.1.3 Pay fees to the new ACA according to the fee schedule approved by the NOP;

5.1.4 Maintain their current certification, including submitting annual updates, allowing timely inspections, and payment of all required fees to the current ACA until the certification process for the new ACA is complete and a new certificate has been issued if they continue to produce or sell products as organic; and

5.1.5 Return their prior certificate along with a written notice of surrender to their prior ACA only after the new certification process is complete.

5.4 To receive new applicants currently or previously certified by another ACA, the new ACA must:

5.4.1 Require the applicant to submit a complete new application and OSP as a new applicant for certification;

5.4.2 Request information regarding their current certification status, including any outstanding notices of noncompliance or proposed adverse actions. Certification may not proceed until outstanding notices and

proposed adverse actions are resolved and eligibility for reinstatement has been issued from the NOP, as needed;

5.4.3 Notify the applicant of their obligation to maintain their current certification throughout the new certification process in order to sell, label or represent products as organic during the change to the new ACA;

5.4.4 Charge fees as approved by the NOP;

5.4.5 Conduct a complete review of the application and OSP for compliance with the NOP regulations;

5.4.6 Schedule and conduct an onsite inspection pursuant to § 205.403; an inspection is required prior to the issuance of a new certificate;

5.4.7 Issue a new certificate only after the applicant is determined to be in compliance with the NOP regulations; and

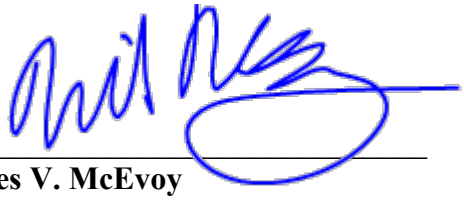
5.4.8 Not allow the new client to use labels which do not correctly identify the ACA of the finished product beyond the tolerances allowed in this instruction.

6 Records

6.1 ACAs will maintain records according to 205.510(b).

6.2 Certified operations will maintain records according to § 205.400(d).

Approval



Miles V. McEvoy
Deputy Administrator
National Organic Program

Instruction
Reinstating Suspended Organic Operations

1. Purpose

This document provides recommended procedures to be followed by organic certifying agents accredited by the National Organic Program (NOP) and suspended organic producers and handlers when requesting reinstatement of certification. It further provides procedures and decision criteria for use by NOP officials when considering requests for reinstatement.

2. Scope

These procedures apply to all U.S. and foreign certification bodies and clients subject to regulations under the National Organic program.

3. Standards Reference

7 CFR § 205.662(f) Eligibility. (1) A certified operation whose certification has been suspended under this section may at any time, unless otherwise stated in the notification of suspension, submit a request to the Secretary for reinstatement of its certification. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and the regulations in this part.

4. Policy

Once an organic producer or handler's organic certification has been suspended for any reason, including nonpayment of fees, eligibility for certification must be reinstated by the NOP prior to resuming certified operations. Accredited certifying agents may not reinstate certification of any producer or handler without NOP review and written approval. The NOP Deputy Administrator has been delegated the responsibility to act on behalf of the Secretary with regards to reviewing and approving requests for reinstatement of certified organic operations.

Managers of suspended operations must submit a written request for reinstatement as described in the Regulations and as explained in the Procedures section of this instruction. The document may be submitted directly to the NOP Deputy Administrator or through the operation's accredited certifying agent.

Requests for reinstatement must be supported by evidence maintained by the operation's accredited certifying agent. Accredited certifying agents must ensure all requirements for certification have been met and that the client is capable of remaining in compliance before submitting written statements to the NOP in support of reinstatement.

NOP will consider reinstatement when it has received a written request for reinstatement from the management of the suspended operation and a statement of complete compliance with the NOP regulations from the operation's accredited certifying agent. NOP will grant reinstatement upon receipt of a declaration of compliance provided by the accredited certification agent who affirms that the organic operation is in full compliance with the NOP regulations and is capable of remaining in

compliance. In situations where NOP considers the operation at risk of repeated or ongoing violations, NOP may deny reinstatement until a pattern of compliance is demonstrated.

5. Procedures

5.1. Producers and Handlers

In order to achieve reinstatement, organic producers and handlers who have had their organic certification suspended must:

1. Correct all nonconformances to the NOP regulations. This includes not only the reasons stated in the notice of suspension issued by the certifying agent, but any outstanding nonconformances that have been identified by the certifying agent or internal reviews by the certified operation.
2. Ensure that their organic systems plan is complete and current and that the plan has been fully implemented.
3. Contact an accredited certifying agent (either the agent that issued the suspension or a different agent) and submit all documents required by the certifying agent for reinstatement. If the certifying agent is different from the certifying agent that issued the suspension, the producer or handler must inform the certifying agent of their suspended status and the reasons for the suspension.
4. Pay all fees required by the accredited certifying agent.
5. Successfully complete an onsite inspection.
6. Prepare a letter addressed to the Secretary of Agriculture requesting reinstatement of certification. Send the letter to:

   USDA, AMS, National Organic Program
   1400 Independence Avenue, SW
   Room 2646, STOP 0268
   Washington, DC 20250

   Delivery services that require a telephone number may use (202) 720-3252.

   As an alternative, producers or handlers may submit the letter addressed to the Secretary through their accredited certification agent. The certifying agent will forward the request along with the required statement of compliance to the NOP regulations.

7. Retain all documents related to the request for reinstatement for future audit by the certifying agent and the NOP.

Accredited Certifying Agents

Upon receipt of the operation's request for reinstatement or notification that such a request has been sent to NOP, certifying agents certifying agent will:

1. Conduct a complete adequacy review of the organic system plan and ensure that all provisions of the NOP regulations have been met.
2. Notify the producer or handler of any nonconformances and arrange for appropriate corrective actions.
3. Arrange for and conduct an onsite inspection of the operation to ensure complete compliance.

4. Prepare a signed letter or other instrument to the Secretary stating that the operation requesting reinstatement has met all requirements of the NOP regulations. A sample letter showing the information to be included is attached to this instruction. [See Exhibit A] The letter must affirmatively state that:
   a. The certifying agent certifying agent has conducted a complete review of the client's organic systems plan. The review found that the client's organic systems plan adequately addresses the root causes of the nonconformances which led to the suspension and is in all respects in full compliance with the NOP regulations.
   b. The certifying agent has conducted an onsite inspection of operation and found the operation to be in full compliance and capable of remaining in compliance with the NOP regulations.
5. Submit the letter (along with the operation's request for reinstatement, if appropriate) to the above address.
6. Retain all documents related to the request for reinstatement for future audit by the NOP.

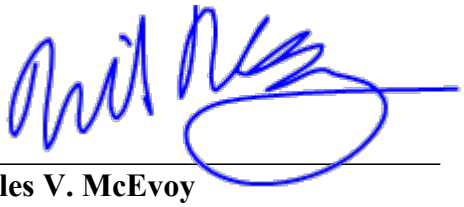
5.2. National Organic Program

Upon receipt of the required documentation, the NOP will:

1. Review the request for reinstatement along with any other supporting or historical documentation available. Contact the certifying agent if questions remain regarding the request.
2. Approve the request if:
   a. All required documents have been submitted;
   b. The documentation clearly demonstrates that the client is in compliance with the NOP regulations and is capable of remaining in compliance, and
   c. Review of historical documents related to the client does not indicate that the client has an ongoing history of nonconformance which may indicate an inability or unwillingness to remain in compliance.
3. If the request is approved, issue a letter to the client, with a copy to the certifying agent, stating that:
   a. The client is eligible for reinstatement by the certifying agent referenced in the request, and
   b. The certifying agent must retain all documents related to the reinstatement for future audit by the NOP.
4. If the request is denied, issue a letter to the client, with a copy to the certifying body, stating the reasons for denying eligibility for reinstatement.
5. Review all documentation related to the reinstatement at the certifying agent's next onsite audit.

Persons with questions regarding these policies or procedures may contact the NOP at the above address.

Approval



Miles V. McEvoy
Deputy Administrator
National Organic Program

Exhibit A: Sample Letter from Suspended Operator Requesting Reinstatement

[The following sample letter may be used as a guide when suspended organic operations wish to submit their request for reinstatement through their certification agency. Certifying agents should forward this letter to the USDA along with a letter attesting to their client's compliance with the NOP regulations.]

September 1, 2010

Secretary of Agriculture
c/o USDA, AMS, TM, National Organic Program
1400 Independence Avenue SW
Room 2646, STOP 0268
Washington, DC 20250

Dear Secretary Vilsack,

The purpose of this letter is to formally request reinstatement of organic certification of our [organic farm or handling facility] under the USDA National Organic Program (NOP) pursuant to paragraph 205.662 (f) of the NOP regulations.

On January 15, 2010, [name of certifying agent] suspended our certification for [briefly state reasons for suspension]. Those deficiencies have been corrected and on [date of inspection] [name of current or new certifying agent] conducted an onsite inspection to verify our compliance with the NOP regulations.

We have asked [name of certifying agent] to forward this letter to you along with the necessary supporting documentation. We would appreciate your prompt consideration of this request for reinstatement.

Sincerely,

/Signature/

[Name of person responsible for program], [Title]
[Name of company, if any]

Exhibit B: Sample Letter from Suspended Operator Requesting Reinstatement

[The following sample letter may be used as a guide when suspended organic operations wish to submit their request for reinstatement through their certification agency. Certifying agents should forward this letter to the USDA along with a letter attesting to their client's compliance with the NOP regulations.]

September 1, 2010

Secretary of Agriculture
c/o USDA, AMS, TM, National Organic Program
1400 Independence Avenue SW
Room 2646, STOP 0268
Washington, DC 20250

Dear Secretary Vilsack

The purpose of this letter is to formally request reinstatement of organic certification of our [organic farm or handling facility] under the USDA National Organic Program (NOP) pursuant to paragraph 205.662 (f) of the NOP regulations.

On January 15, 2010, [name of certifying agent] suspended our certification for [briefly state reasons for suspension]. Those deficiencies have been corrected and on [date of inspection] [name of current or new certifying agent] conducted an onsite inspection to verify our compliance with the NOP regulations.

We have asked [name of certifying agent] to provide you with the necessary supporting documentation. We would appreciate your prompt consideration of this request for reinstatement.

Sincerely,

/Signature/

[Name of person responsible for program], [Title]
[Name of company, if any]

Exhibit C: Sample Letter from Certifying agent Requesting Reinstatement of Suspended Operation

[Certifying agents may use the following sample letter as a guide when suspended organic operations submit their request for reinstatement through their certification agency. Certifying agents should send the letter to USDA and enclose the client's letter requesting reinstatement.]

September 1, 2010

Secretary of Agriculture
c/o USDA, AMS, TM, National Organic Program
1400 Independence Avenue SW
Room 2646, STOP 0268
Washington, DC 20250

Dear Secretary Vilsack,

The purpose of this letter is to provide the necessary statements of compliance in support of a request for reinstatement of organic certification of [name of organic operation] under the USDA National Organic Program (NOP) pursuant to 7CFR § 205.662 (f). A letter to you from our client requesting reinstatement is enclosed.

On January 15, 2010, [name of certifying agent] suspended [name of operation] for [briefly state reasons for suspension]. Since that time, [name of operation] has worked to correct the deficiencies identified in the notice of suspension and has requested reinstatement under the NOP. In order to verify our client's eligibility for certification, we have:

1. Reviewed the client's proposed corrective actions and found that all identified nonconformities have been fully addressed;
2. Conducted a complete review of their organic systems plan and found it to be in compliance with the NOP regulations, and
3. Conducted an onsite inspection of the operation on [date of inspection] which found that [name of operation] has fully implemented their organic systems plan and is capable of remaining in compliance with the NOP regulations.

We would appreciate your prompt consideration of their request. If you have questions or other concerns regarding their eligibility for reinstatement, please contact [Name of certifying agent contact] at [phone number] or by e-mail at [email address].

Sincerely,

/Signature/

[Name of certifying agent representative], [Title]
[Name of certifying agent]
Enclosure

Exhibit D: Sample Letter from Certifying agent Requesting Reinstatement of Suspended Operation

[Certifying agents may use the following sample letter as a guide when suspended organic operations submit their request for reinstatement directly to USDA.]

September 1, 2010

Secretary of Agriculture
c/o USDA, AMS, TM, National Organic Program
1400 Independence Avenue SW
Room 2646, STOP 0268
Washington, DC 20250

Dear Secretary Vilsack,

The purpose of this letter is to provide the necessary statements of compliance in support of a request for reinstatement of organic certification of [name of organic operation] [location of organic operation] under the USDA National Organic Program (NOP) pursuant to 7CFR § 205.662 (f).

On January 15, 2010, [name of certifying agent] suspended [name of operation] for [briefly state reasons for suspension]. Since that time, [name of operation] has worked to correct the deficiencies identified in the notice of suspension and has requested reinstatement under the NOP. In order to verify our client's eligibility for certification, we have:

1. Reviewed the client's proposed corrective actions and found that all identified nonconformities have been fully addressed;
2. Conducted a complete review of their organic systems plan and found it to be in compliance with the NOP regulations, and
3. Conducted an onsite inspection of the operation on [date of inspection] which found that [name of operation] has fully implemented their organic systems plan and is capable of remaining in compliance with the NOP regulations.

[Name of client] has already submitted their request for reinstatement directly to USDA. We would appreciate your prompt consideration of their request. If you have questions or other concerns regarding their eligibility for reinstatement, please contact [Name of certifying agent contact] at [phone number] or by e-mail at [email address].

Sincerely,

/Signature/

[Name of certifying agent representative], [Title]
[Name of certifying agent]

Exhibit E: Sample Letter from NOP to Reinstated Operation

Reinstatement of Certification

September 1, 2010

[Name of producer]
[Address]
City, State, Zip]

Dear [Name of producer],

The National Organic Program (NOP) has completed its review of your request for reinstatement as a certified organic operation. Pursuant to 7CFR § 205.662 (f)(1) and based on the compliance statement provided by your accredited certifying agent, the National Organic Program, on behalf of the Secretary of Agriculture, grants [Name of operation] reinstatement as a certified organic operation. Please retain all documents relating to this reinstatement for possible future onsite auditing by NOP representatives.

Sincerely,

/Signature/

Deputy Administrator
Agricultural Marketing Service
National Organic Program]

CC: Organic Certifying Agent
State Organic Program
AMS Compliance Staff

Instruction
Processing Requests for Temporary Variances

1. Purpose

This document describes policies and procedures used by the National Organic Program (NOP) to evaluate requests for temporary variances to the NOP regulations submitted by certifying agents or State Organic Programs.

2. Scope

These procedures apply to variances processed by the NOP staff.

3. References

7 CFR Part 205.290 Temporary Variances

4. Policy

4.1. Temporary variances from the production and handling requirements of the NOP regulations may be granted by the Administrator for natural disasters declared by the Secretary, damage caused by severe weather, or other business interruption, or for the purpose of conducting research in organic production or handling.

4.2. Variances will not be granted to allow for:

a. Feeding non-organic feed to organic livestock
b. The use of materials prohibited under § 205.105.

5. Responsibilities

5.1. Certifying agents and State Organic Programs are responsible for:

a. Receiving and reviewing requests for temporary variances from certified operators.
b. Recommending the establishment of a temporary variance in writing to the NOP.
c. Providing written justification for the variance based on the appropriate regulatory citation under § 205.290, including documentation, news articles, or records supporting the recommendation.

5.2. NOP is responsible for:

a. Evaluating recommendations for the establishments of temporary variance from the NOP regulations based upon requirements stipulated in § 205.290.
b. Issuing temporary variances in compliance with NOP regulations.

6. Procedures

6.1. NOP staff will receive the temporary variance recommendation in writing from the certifying agent or State Organic Program official.

6.2. Within 3 days of receipt, NOP staff will evaluate recommendations for temporary variance for completeness. This review will determine whether there is adequate information and whether justification has been provided to evaluate the temporary variance recommendation.

a. If complete, within 7 days after receipt, NOP staff will assess the request against allowed categories for variances:
   1. natural disasters declared by the Secretary;
   2. damage caused by drought, wind, fire, flood, excessive moisture, hail, tornado, earthquake;
   3. unavoidable business interruptions, or
   4. to conduct research on organic production and handling techniques or inputs.

b. NOP staff may contact the certifying agent or State Organic Program to obtain additional information or details relevant to a decision on whether to grant the temporary variance.

6.3. NOP staff will forward recommendations for approving or denying temporary variances to the NOP regulations to the Administrator for decision.

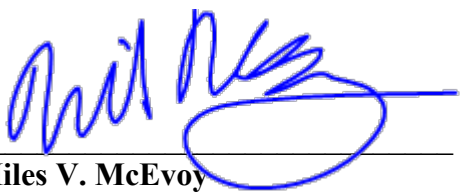
6.4. If the Administrator grants the temporary variance then the NOP will issue a letter of decision regarding the temporary variance, including the scope, details and duration of the temporary variance. Determining factors for duration of temporary variance will include expected recovery times from natural disasters or business interruption or the duration of the research project.

6.5. If the Administrator denies the request for a temporary variance then the NOP will issue a letter outlining the reasons why the temporary variance was denied.

6.6. NOP will publish the decision on the NOP web site the decision to grant or deny the temporary variance.

7. Records

NOP staff will maintain records of temporary variances granted on the NOP shared drive with a copy in the certifying agents file under the relevant calendar year.



Miles V. McEvoy
Deputy Administrator
National Organic Program

National Organic Program
General Accreditation Policies and Procedures

1. Purpose and Scope

This procedure provides general policies and procedures for the accreditation of organic certification agencies under the authority of the United States Department of Agriculture (USDA), Marketing and Regulatory Programs (MRP), Agricultural Marketing Service (AMS), National Organic Program (NOP). These policies and procedures apply to U.S. organic certification agencies and organic certification agencies located outside the United States that wish to obtain accreditation under the U.S. National Organic Program.

These general procedures may be clarified or expanded upon by other more specific NOP procedures.

2. Referenced Documents

The following documents are included by reference in this NOP instruction:

2.1 *The Organic Foods Production Act of 1990; 7 U.S.C 6501 et seq.*

2.2 *7 CFR Part 205, National Organic Program; Final Rule*

2.3 *International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) 17011 – Conformity Assessment – General requirements for accreditation bodies accrediting conformity assessment bodies: 2004*

2.4 *ISO 19011:2002, Guidelines for quality and/or environmental management systems auditing*

3. Authority

The NOP accredits organic certification agencies under the authority of the Organic Foods Production Act of 1990, as amended (7 U.S.C 6501 et seq.) as described in the Code of Federal Regulations Title 7, Part 205, National Organic Program, Final Rule. The NOP Final Rule assigns responsibility for execution of the National Organic Program to the AMS Administrator. The AMS Administrator has delegated certain responsibilities as described in the NOP Final Rule and this procedure.

4. Availability of Service

4.1 Who may apply?

Accreditation to conduct organic certification services under the NOP is available to government and private organizations who qualify under the terms of the NOP regulations. Accreditation is available to any qualified certifier, whether in the U.S. or in other countries. Accreditation services are available regardless of the number of certifications conducted by an agency. Eligibility for accreditation is not conditional upon size of the operations or membership in any association.

4.2 Travel restrictions

NOP accreditation is not available to organic certifying bodies that are based or primarily operate in areas where travel by Federal employees is impeded pursuant to U.S. State Department travel warnings or restrictions. Applicants for accreditation that are affected by such warnings or restrictions will be denied consideration and have their applications and fees returned. If audits cannot be conducted as

required by the NOP regulations due to U.S. State Department travel restrictions the NOP may suspend the accreditation until conditions change and restrictions are lifted.

4.3 Nondiscrimination

Accreditation services are available without discrimination on the basis of color, race, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, or protected genetic information. Persons with disabilities who require alternative means for communication of program information (Braille, large print, audio tape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to the USDA, Director, Office of Civil Rights, Whitten Building, 14th and Independence Avenue SW, Room 326-W, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity service provider and employer.

5. Responsibilities

5.1 AMS Administrator

The AMS Administrator is responsible for conducting certain activities with regard to accreditation of organic certification agencies. These activities include:

a. Final decision on accreditation.
b. Suspending or revoking accreditations of certification agencies.
c. Reinstating accreditations of certification agencies that have had their accreditations revoked or suspended.

5.2 NOP Deputy Administrator

5.2.1 The NOP Deputy Administrator is responsible for approving NOP operational policies and procedures for accreditation. The NOP Deputy Administrator may assign specific tasks related to these activities to competent NOP personnel, but retains final responsibility for their proper execution.

5.3 Director, Accreditation & International Activities Division (AIA Division)

5.3.1 The AIA Division Director is responsible for:

a. Supervising and administering all accreditation activities.
b. Directing the activities of and chairing the NOP Accreditation Committee.
c. Receiving and processing applications for accreditation.
d. Coordinating accreditation and compliance assessments of certification agencies.
e. Making recommendations to the AMS Administrator on accreditation decisions.

5.3.2 The AIA Division is responsible for making publicly available and updating on a regular basis, a certifying agent's current status of accreditation. This includes the following:

a. The name and address of each accredited certifying agent;
b. Dates of granting accreditation;
c. Scopes of accreditation, condensed and/or in full. If condensed scopes are provided, information shall be provided on how to obtain the full scopes.

The AIA Division Director may delegate specific tasks related to these activities to competent NOP personnel, other AMS Programs, or qualified state or private organizations, but retains final responsibility for their proper execution.

5.4 Certifying Agents

Certifying agents accredited to conduct certifications to the NOP are responsible for:

5.4.1 Conducting certification activities according to the NOP regulations: including

a. Ensuring certified clients comply with all requirements of the NOP regulations.
b. Ensuring compliance with labeling requirements of products of operations they certify.
c. Approving organic systems plans for each operation they certify prior to onsite inspections.
d. Approving all inputs, ingredients, and other materials used by certified operations prior to their use.
e. Conducting annual onsite inspections of their certified operations to verify implementation of an organic system plan which they have previously approved.
f. Issuing certification decisions and certificates in compliance with NOP regulations.
g. Issuing notices of noncompliance and suspending or revoking the certification of clients that do not comply with the NOP regulations.
h. Reporting adverse actions against certified operations to the NOP, including notices of noncompliance, proposed suspension, proposed revocation, suspension, revocation, or denial of certification to the NOP Appeals concurrent with their issue.
i. Obtaining NOP approval for reinstatement of eligibility for certification of suspended or revoked operations prior to recertification.
j. Submitting annual updates of application information and annual reports of operations certified to the NOP.
k. Maintaining records as required in the NOP regulations.
l. Ensuring certifying agency personnel are qualified and remain competent to perform duties related to certification.
m. Attending required NOP training.
n. Paying all hourly auditing fees, travel expenses, and other costs associated with the processing, reviewing, and onsite auditing and preparing reports on the certifying agency's program for purposes of accreditation.
o. Other terms and conditions determined by the AMS Administrator to be necessary.

5.4.2 Certifying agents are also responsible for:

a. Committing to continually fulfill the requirements of accreditation set by the NOP for areas where accreditation is sought or granted. This includes agreeing to adapt to changes in the requirements for accreditation.
b. Accommodating and cooperating, as is necessary, with the NOP to verify fulfillment of requirements for accreditation.
c. Providing access to information, documents, and records necessary for the assessment and maintenance of the accreditation. Including documents that provide insight into the level of independence and impartiality of the certifying agent from related bodies, where applicable.
d. Arranging witnessing of certification services as requested by NOP.
e. Claiming accreditation only with respect to the scope for which the certifying agent has been granted accreditation.
f. Using accreditation in such a manner as not to bring NOP into disrepute.

5.4.3 Certifying agents are required to notify the NOP, without delay, of significant changes relevant to its accreditation, in any aspect of its status or operation relating to:

a. Its legal, commercial, ownership, or organizational status,
b. The organization, top management, and key personnel,
c. Main policies,
d. Resources and premises,
e. Scope of accreditation, and
f. Other matters that may affect the ability of the certifying agent to fulfill accreditation requirements.

5.5 Audit, Review and Compliance Branch

The AMS, Livestock and Seed Program; Audit, Review and Compliance (ARC) Branch, conducts audits upon request of the AIA Division Director. Specific responsibilities of the ARC Branch include:

a. Conducting and reporting the results of document adequacy reviews (desk audits).
b. Planning, conducting and reporting the results of onsite accreditation audits.
c. Reviewing and commenting on proposed corrective actions to noncompliances identified during document adequacy reviews or onsite compliance audits.
d. Collecting published hourly user fees and travel expenses for all NOP accreditation-related services.

6. Requirements for Accreditation

To become accredited, certification agencies must meet requirements as described in Subpart F, §§205.501 through 205.505, and §205.510 of the NOP Final Rule.

7. Applying for Accreditation

7.1 Certifying agencies may apply for accreditation under the NOP by submitting a complete application to the following address:

USDA, AMS, National Organic Program
Accreditation and International Activities Division
100 Riverside Parkway, Suite 135
Fredericksburg, Virginia 22406

7.2 All applications and supporting documentation must be submitted in English as one hard copy and one identical electronic version. Applications must include:

a. A $500 application fee.
b. An original signed copy of the LS-313 Application for Service.
c. An original signed copy of the TM-10CG Application for Accreditation.
d. All supporting documentation and procedures as required in 7 CFR 205.503 to 205.505

For more detailed information, see NOP 2004, *How to Apply for NOP Accreditation*.

8. Assessment Activities

Several types of assessment activities occur in the process towards obtaining accreditation, including a Documentation Adequacy Audit (desk audit), Pre-decisional Audit (new applications only), Initial On-site Audit, Mid-Term Surveillance Audit, and Reaccreditation Audit. These activities are described in further detail below.

8.1 Documentation Adequacy Audits (Desk Audits)

Upon receipt of an application for accreditation, the NOP arranges for a documentation adequacy audit to be conducted by a qualified AMS auditor. An auditor conducts a detailed assessment of all submitted documentation and submits a complete report to the AIA Division Director. Documentation Adequacy Audits are completed within 90 days of receipt of the application for accreditation.

8.1.1 Review of Documentation Adequacy Audit Report

The AIA Division reviews document adequacy audit reports for content and clarity. The AIA Division Director may contact the AMS auditor for clarifications as needed. Applications found to be adequate under the regulations are then scheduled for an onsite audit. If an application is found to be inadequate, the AIA Division Director may deny the application or request additional documents to be submitted prior to further consideration. Neither NOP staff nor ARC Branch staff will offer or propose remedies to identified barriers to accreditation.

8.1.2 Amending Applications to Address Identified Deficiencies

Applicants for accreditation must address any significant deficiencies or noncompliances to the NOP regulations identified during the desk audit prior to further consideration for accreditation.

8.2 Onsite Audits

Pre-decisional audits, initial accreditation audits, mid-term surveillance audits, and reaccreditation audits are all forms of onsite audits.

8.2.1 Onsite audits are conducted in accordance with ISO 19011, Guidelines for Quality and/or Environmental Management System Auditing and AMS procedures.

8.2.2 All onsite audits include a review of the certifying agent's certification procedures, decisions, facilities, administrative and management systems, and (if applicable) production or handling operations certified by the certifying agent.

8.2.3 The audit team will consist of one lead auditor and may include additional auditors or technical experts as determined by the scope of the audit.

8.2.4 The auditor or audit team will conduct the audit of the certification agency at premises where the certifier performs key activities. Key activities include, but are not limited to: contract review; policy formulation; inspection planning; the review of applications; the review of materials, ingredients and inputs; review of inspection reports; decision making; and administrative functions.

8.2.5 The team will also conduct witness audits at other selected locations where the certifier operates to gather objective evidence that the certifier is competent and conforms to the NOP regulations. Certifiers that operate internationally are subject to reviews in each country in which they operate.

8.3 Pre-decisional audits

Pre-decisional onsite audits are conducted on all applicant certifying agents.

8.3.1 Pre-decisional audits are conducted within 6 months of approval of the application for accreditation.

8.3.2 Applicant certifying agents who do not have clients yet, will receive an onsite audit. The onsite audit may be a limited scope audit that includes at a minimum an onsite review of procedures, staff interviews, and a general assessment of the organization’s resources and administrative capacity to provide certification services under the NOP.

8.3.3 Applicant certifying agents who have certified operations to other standards will receive an onsite audit. The onsite audit shall the areas described for applicant certifying agents with no clients, in addition to witness audits of operations certified by the applicant agency.

8.3.4 Auditors will prepare a report of the onsite for review and consideration by the Accreditation Committee.

8.4 Initial Accreditation Audits

8.4.1 Within one year of the pre-decisional audit, the initial accreditation audit shall be conducted.

8.4.2 Initial accreditation audits are conducted by the ARC Branch and/or NOP staff.

8.4.3 The results of initial accreditation audit are reported to the NOP Accreditation Committee. The NOP Accreditation Committee will review the information and provide a recommendation to the Administrator, based on the audit findings.

8.5 Mid-term Surveillance Audits

8.5.1 Each certifying agent will receive at least one onsite surveillance audit after the initial onsite accreditation audit and before the anniversary date of the 5-year term of accreditation.

8.5.2 This audit is conducted at least one year after the initial onsite accreditation audit and at least one year prior to the end of the term of accreditation.

8.5.3 Mid-term onsite surveillance audits are conducted by the ARC Branch and/or NOP staff.

8.5.4 The results of mid-term onsite surveillance audits are reported to the NOP Accreditation Manager. The NOP Accreditation Manager will review the information and determine what, if any, actions are necessary based on the audit findings.

8.5.5 If there are no noncompliances, no further action will be required of the certifying agent as a result of the audit. If noncompliances are discovered, certifying agents must submit proposed corrective actions in response to the audit report.

8.5.6 The NOP Deputy Administrator may propose adverse actions for any unresolved noncompliances.

8.5.7 The Accreditation Manager submits the audit report to the certifying agent and files associated records in the certifying agent files, as appropriate.

8.6 Renewing Accreditation

8.6.1 Approximately one year before the anniversary date of a certifying agent's accreditation; the NOP will send a renewal notice to the certifying agent as a reminder of the requirement to renew their accreditation.

8.6.2 Certifying agents must renew their accreditation or voluntarily surrender their certificate of accreditation.

8.6.3 Certifying agents may apply for renewal one year to six months prior to the anniversary date of their accreditation period. Certifiers who apply for renewal later than six months prior to the anniversary date of their accreditation period risk a lapse in accreditation.

8.6.4 Certifying agents may request to change their annual reporting date in order avoid preparing annual reports during their busiest seasons. To change their annual renewal date, the certifying agent must submit their renewal application at least six months prior to their requested renewal date. The requested date must occur before the accreditation renewal date.

8.6.5 An NOP official will review applications and arrange for an adequacy audit and onsite evaluation. A site evaluation will be conducted after application for renewal of accreditation but prior to the issuance of a notice of renewal of accreditation.

8.7 Submitting Annual Updates and Reports

In addition to audits, certifying agents are required to submit changes to policies, procedures, operating protocols; and lists of certified operations and associated products annually to the NOP.

8.7.1 Changes to Information

1. Each year, on or before the anniversary date of their initial accreditation, certifying agents must submit an annual update of their company information, policies, procedures, and operating protocols to the NOP, AIA Division office in Fredericksburg, VA. For more information, see *NOP 2024, NOP Annual Update Procedures*.

2. Information should be submitted using electronic media (preferred), but may be submitted as hard copy.

3. Information is retained for reference in the AIA Division office and is forwarded to the ARC Branch as needed in preparation for surveillance and renewal onsite audits.

8.7.2 Lists of certified operations

Certifying agents must submit a current list of operations certified as of January 2nd of each calendar year.

1. The list must include the name, address, and phone number of the certified operations, the type of operation certified (crops, livestock, wild crop harvest or handling) and a list of the products included in the certification.

2. This list must be submitted in the format provided by NOP. For more information, see NOP 2026, Submitting Annual Lists of Certified Operations.

9. Audit Reports

9.1 The lead auditor prepares a detailed report of the audit observations and findings and submits it through the ARC Branch or relevant supervising body to the AIA Division within 30 days of the completion of the audit.

9.2 Review and Approval of Audit Reports

9.2.1 The NOP Accreditation Manager, or designee, reviews audit reports for content and clarity, and may request clarification of findings, as needed.

9.2.2 The NOP Accreditation Manager reviews the audit report. If noncompliances are reported, the Accreditation Manager prepares a Notice of Noncompliance for AIA Division Directors signature that requests the certifying agent to submit corrective/preventive actions and identifies timeframes in which they are to be accomplished.

9.2.3 The Accreditation Manager sends the certifying agent a copy of the audit report.

10. Accreditation Committee Review

10.1 The NOP Accreditation Committee is comprised of NOP staff personnel who have expertise in the application of the NOP regulations, agricultural production and processing practices, and/or the evaluation of audit-based certification programs. Members serve as needed on committees based on their availability and the need for specific areas of expertise.

10.2 The Accreditation Committee reviews applications for new and renewal accreditation and prepares recommendations to the AMS Administrator for final decision on accreditation.

1. If the committee does not recommend approval of the application, the application is returned to the applicant, along with the auditor's report and committee findings. Applicants may reapply for accreditation at any time.

2. If the committee's recommendation is to approve or approve with conditions, the application, along with the auditor's report and committee findings, is forwarded through the AIA Division Director and the Deputy Administrator to the AMS Administrator for final decision.

11. Decision on Accreditation by the AMS Administrator

11.1 The AMS Administrator is responsible for all final approvals of certifying agent accreditations. Decisions are based on the AMS Administrator's review of the audit and review reports, the Accreditation Committee's findings, and any supporting documentation.

11.2 The AMS Administrator renders a decision to grant or deny accreditation.

11.3 Initial accreditation is granted for a period of 5 years from the date of approval by the AMS Administrator.

11.4 Renewal of an unexpired previous accreditation is granted for a period of 5 years from the end date of the previous term of accreditation.

12. Publication of Accreditation Status

Upon initial accreditation or any change in a certifying agent's accreditation status, the AIA Accreditation Specialist will notify the NOP webmaster via e-mail and request posting of the status of accreditation or other action to the AMS Internet Web site at http://www.ams.usda.gov/nop.

13. Extending the Scope of Accreditation

Certifying agents may request to extend the scope of their accreditation at any time. To do so, the certifying agent must submit a written request to the NOP requesting to extend the scope of accreditation. The Accreditation Committee will review the application and provide, to the Administrator, a recommendation for granting or denying the certifying agent's request. It is possible that an onsite audit may be required prior to making a recommendation or a determination.

14. Reducing the Scope of Accreditation

Certifying agents may request to reduce the scope of their accreditation at any time. To do so, the certifying agent must submit a written request to the NOP. The Accreditation Manager shall review the request and prepare for review by the Deputy Administrator. Upon approval, the certificate of the certifying agent and any other associated information shall be updated to reflect the reduction in scope.

15. Suspending or Revoking Accreditation

When a certifying agent fails to comply with the requirements for accreditation as described in the NOP regulations, the AIA Division Director will issue a notice of noncompliance to the certifying agent and require corrective actions to be submitted within a specified time period, usually 30 to 60 days.

15.1 If the certifying agent provides appropriate corrective actions or successfully rebuts the finding of the noncompliance within the prescribed time period, the AIA Division Director will clear the noncompliance.

15.2 The AIA Division will respond to the certifying agent within 30 days of receiving the certifier's corrective actions.

15.3 If a certifying agent fails to meet the NOP requirements for accreditation, the NOP Deputy Administrator may issue a Notice of Proposed Suspension or Notice of Proposed Revocation to the certifying agent.

15.4 A Notice of Proposed Suspension may be issued for any failure to correct identified noncompliances to the NOP regulations.

15.5 A Notice of Proposed Revocation may be issued for noncompliances that cannot be remedied or that appear to be willful on the part of the certifying agent.

16. Surrendering Accreditation

Certifying agents who no longer wish to maintain their NOP accreditation must surrender their accreditation by submitting a written notification of such to the AMS Administrator. Certifying agents who wish to surrender their accreditation should work with their certified operations to transfer their certification to another NOP certifying agent.

Certifying agents who discontinue certification services without notifying the NOP and do not surrender their certificate of accreditation or provide the NOP with records of their certification activities will be issued a Notice of Noncompliance and Proposed Revocation for failure to comply with 205.505 Statement of Agreement.

17. Cessation of Certification Activities

A certifying agent whose accreditation is surrendered, suspended or revoked must:

17.1 Cease all certification activities in each area of accreditation and in each State or country for which its accreditation is surrendered, suspended or revoked; and

17.2 Transfer to the Secretary and make available to any applicable State organic program's governing State official all records concerning its certification activities that were surrendered, suspended or revoked.

18. Appeals Process for Accredited Certification Agencies

An applicant certifying agent or a certifying agent may appeal a denial of accreditation or proposed suspension or revocation of accreditation to the AMS Administrator.

18.1 Appeals to the AMS Administrator must be filed in writing within 30 days of receipt of the notice and addressed to:

Administrator, USDA-AMS
c/o NOP Appeals Staff
1400 Independence Avenue, S.W.
Mail Stop 0203 - Room 1114
Washington, DC 20250

18.2 Appeals must include the following information:

1. A copy of the adverse decision; and
2. A statement of the appellant's reasons for believing that the decision was not proper or made in accordance with applicable program regulations, policies, or procedures.

18.3 The AMS Administrator will review the information provided in the appeal and any additional information the Administrator may consider necessary.

18.4 If the AMS Administrator sustains the appeal, the applicant will be issued accreditation, or a certifying agent will continue its accreditation, as applicable to the operation.

18.5 If the AMS Administrator denies the appeal, a formal administrative proceeding to deny, suspend, or revoke the accreditation will be initiated. Such proceedings are conducted pursuant to the U.S. Department of Agriculture's Uniform Rules of Practice, 7 CFR Part 1, Subpart H.

19. Complaints

Certifying agents, certified operations, or any other interested party may file a complaint with the NOP, Compliance and Enforcement Division. Refer to NOP 4001 for specific guidance on submitting complaints.

20. Fees for Accreditation

Applicant certifying agents are assessed fees as nearly as possible to the cost of providing accreditation services. Except as otherwise noted, fees-for-service are based on the time required to render the service provided calculated to the nearest 15-minute period.

Billable activities include the review of applications and accompanying documentation, evaluator travel, the conduct of onsite evaluations, review of annual reports and updated documents and information, and the time required to prepare reports and any other documents in connection with the performance of service.

20.1 Travel charges

When service requires more than one half hour of travel, charges will include a mileage charge at the published rate and travel tolls, if applicable, or the actual cost of common carrier transportation.

20.2 Per diem charges

When service requires travel by AMS auditors, the fee for such service shall include a per diem charge if the employee(s) performing the service is paid per diem in accordance with existing travel regulations. Per diem charges to applicants and certifying agents will cover the same period of time for which the evaluator(s) receives per diem reimbursement. The per diem rate will be the published rate for reimbursement by the USDA.

20.3 Other costs

Any additional costs associated with providing accreditation services will be charged to the applicant. Such costs include, but are not limited to, equipment rental, photocopying, delivery, facsimile, telephone, or translation charges incurred in association with accreditation services.

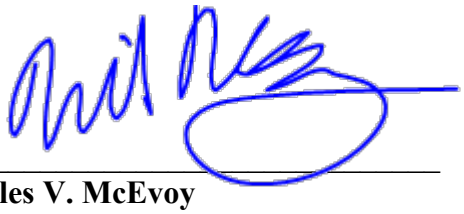
20.4 Estimates

Applicants will be provided an estimate of the total fees to be assessed prior to providing service.

21. Contact Information

For more information regarding NOP accreditation policies and procedures contact:

Director, Accreditation and International Activities Division
USDA, AMS, National Organic Program
Room 2646-South, Ag Stop 0268
1400 Independence Avenue, SW
Washington, DC 20250
Phone: (202) 720-3252
FAX: (202) 205-7808



Miles V. McEvoy
Deputy Administrator
National Organic Program

Approved on August 25, 2010

United States Department of Agriculture
Agricultural Marketing Service
National Organic Program

1400 Independence Avenue SW.
Room 2646-South Building
Washington, DC 20250

NOP 2004
Effective Date: July 28, 2005
Distribution: All

How to Apply for NOP Accreditation

Purpose

This instruction provides procedures to be used by organic certification companies when applying for accreditation under the USDA's National Organic Program (NOP).

Scope of this Instruction

This instruction applies to domestic and foreign certification companies (applicants) that request accreditation under the NOP. Applicants may be either private or government entities.

Referenced Documents

Applicants for accreditation should use or refer to the following documents in order to complete the accreditation application:

- 7 CFR Part 205, National Organic Program; Final Rule
- Organic Foods Production Act of 1990
- Form TM-10CG (8-8-01) – Application for Accreditation (attached)
- Form LS-313 – Application for Service (attached)

Policies

Each new and renewal applicant for accreditation under the NOP must submit a complete written application as described in this procedure. Unless otherwise specified in writing by the NOP, all applications and supporting documentation must be submitted in English.

All initial and renewal applications must be accompanied by a payment of $500 (U.S. Dollars) in the form of a check or money order payable to "AMS". This payment will be applied to the fees charged by the Audit, Review, and Compliance (ARC) Branch for reviewing and reporting on the adequacy of the application.

Procedures

1. Complete Form TM-10CG – APPLICATION FOR ACCREDITATION

Form TM-10CG is one of two official forms to be completed by certifying agencies. It only needs to be completed for initial and renewal applications. This form does not need to be submitted with annual updates; however certifiers should notify the NOP Accreditation Manager in writing any time information submitted on this form changes due to business relocations, personnel changes, or other events.

Except where noted, all applications must include the following basic business information:

a) The name of the business or entity applying for accreditation;

Approval by:
ADA

b) The applicant's primary office location and address (please include both mailing and physical addresses, if different);
c) Name of the primary contact person responsible for day-to-day operations of the certification program;

d) Tax identification number;
e) Telephone number
f) Facsimile number;
g) Internet website address and e-mail address (please provide both, if available);
h) Enter the estimated number of operations to be certified annually for each area of operation (crops, livestock, wild crop and handling);
i) Check the type of entity applying for accreditation (government agricultural office, not-for-profit business, for-profit business, or other, such as a membership association);
j) After reading the affirmation statements, sign and date the form, and print or type the name and title of the person signing the form.

2. In addition to items (a) – (j) above, applicants must submit the following documents in order to demonstrate their ability to conduct certification operations in accordance with the regulations:

k) A copy of the fees for all services to be provided to the applicant under the NOP regulations;
    - Government entities must provide a copy of the official's authority to conduct certification activities under the Organic Foods Production Act and 7 CFR Part 205.
    - Private entities must provide documentation showing the entity's status and organizational purpose, such as articles of incorporation, bylaws or ownership or membership provisions, and date of establishment.
l) A list of each state and foreign country in which the applicant currently certifies or intends to certify production, processing or handling operations. This must include countries where operations are certified through cooperative agreements and contracted inspections with other certifiers.
m) A copy of the applicant's policies and procedures for training, evaluating, and supervising personnel. This information should include checklists, performance acceptability criteria, training and supervisory schedules, training curriculum, and other supporting documentation. It should provide objective evidence that personnel have current training to perform in their respective functions, that they are annually reviewed, and appropriately supervised.
n) The names and position descriptions of all personnel to be used in the certification operation, including administrative staff, certification inspectors, members of any certification review and evaluation committees, contractors, and all parties responsibly connected to the certifying agent.
o) A description of the qualifications, including experience, training, and education in agriculture, food technology, organic production, and organic handling for:
    - Each inspector to be used by the applicant, and
    - Each person to be designated by the applicant to review or evaluate applications for certification.

    Documents submitted under this section must clearly demonstrate that the persons performing each process within the applicant's agency are fully qualified to conduct or supervise each

function for which they are responsible. The qualifications for each person who reviews applications for adequacy, reviews and approves inputs and other materials, reviews organic systems plans, conducts onsite inspections of farms or handling operations, conducts internal audits of the certification agency, or participates in certification decisions.

p) A description of any training that the applicant has provided or intends to provide to personnel to ensure that they comply with and implement the requirements of the Organic Foods Production Act and 7 CFR Part 205. This information should include topics to be addressed during the training and dates the training will be conducted or attended.

q) A copy of the procedures used to evaluate certification applicants, make certification decisions, and issue certificates. These procedures must include:

r) A copy of the procedures used for reviewing and investigating certified operations' compliance with the Organic Foods Production Act and the NOP regulations and reporting those violations to the AMS Administrator;

s) A copy of the procedures to be used for complying with the recordkeeping requirements described in 7 CFR Part 205.501(a)(9);

t) A copy of the procedures to be used for maintaining the confidentiality of any business-related information as set forth in 7 CFR Part 205.501(a)(10);

u) A copy of the procedures, including any fees to be assessed, for making the following information available to any member of the public upon request:
   - Certification certificates issued during the current and 3 preceding calendar years;
   - A list of producers and handlers whose operations it has certified, including for each the name of the operation, type(s) of operation(s), products produced, and the effective date of the certification during the current and 3 preceding calendar years;
   - The results of laboratory analyses for residues of pesticides and other prohibited substances conducted during the current and 3 preceding calendar years;
   - Other business information as permitted in writing by the producer or handler;

v) A copy of the procedures to be used for sampling and residue testing pursuant to 7 CFR Part 205.670;

w) A copy of procedures intended to be implemented to prevent the occurrence of conflicts of interest as described in 7 CFR Part 205.501(a)(11);

x) A conflict of interest disclosure report for all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and all parties responsibly connected to the certifying agent, identifying any food- or agriculture-related business interests, including business interests of immediate family members, that cause a conflict of interest;

y) For applicants who already conduct certification operations:
   - A list of all production, processing, and handling operations currently certified by the applicant. This must include operations certified in cooperation with or through subcontracted inspections with other certification bodies.
   - Copies of at least 3 different inspection reports and certification evaluation documents for production, processing, or handling operations certified by the applicant during the previous year for each area of operation for which accreditation is requested.

- The results of any accreditation process of the applicant's operation by an accrediting body during the previous year for the purpose of evaluating its certification activities.

z) Any other information the applicant believes may assist in the evaluation of the applicant's expertise and ability perform certification activities.

3. Complete LS Form – 313 – APPLICATION FOR SERVICE

This form is used to provide billing authority for the AMS Livestock and Seed Program, Audit, Review, and Compliance (ARC) Branch, which conducts document reviews and onsite audits under the NOP. Applicants for accreditation must submit this form when they first apply for accreditation. It should also be resubmitted when the billing address of the certification body changes. The form should be included in the NOP application for accreditation package. The NOP will forward this document to the ARC Branch for processing. To complete Form LS – 313:

a) Under "NAME AND ADDRESS OF ESTABLISHMENT" print or type the street address where the certification office is located. This will be the location where onsite audits will be conducted. Do not put a post office box number here. If the certification body maintains more than one office, this information should be included in another part of the application package.

b) Under "TAX ID #" print or type the certification company's tax identification number.

c) Under "TYPE OF SERVICE APPLIED FOR" click on or check the box next to "Other" and print or type "Organic Accreditation." On the right hand side of this same area click on or check the box next to "Other" and print or type in "Certifier."

d) Leave the box labeled "LEGAL STATUS" blank. This information is collected elsewhere.

e) Leave the box labeled "FINANCIAL INTEREST" blank. This information is not applicable to NOP accreditation.

f) Under "NAME AND ADDRESS OF APPLICANT" enter the name and address of the person to whom accreditation audit billing information should be sent. This may be a street address or a post office box number where mail is received.

g) Under "SIGNATURE OF APPLICANT OR REPRESENTATIVE AND DATE" sign and date the form after it is completed and printed out.

h) Under "PRINT OR TYPE NAME OF SIGNEE" print or type the name of the person who signed the form.

i) Under "SOCIAL SECURITY NUMBER" print or type the social security number of the applicant or representative who signs the form. This is not necessary if the applicant is a business and a tax identification number has been provided.

j) Under "TELEPHONE NUMBER" print or type the phone number of the applicant or representative who signs the form.

k) Under "E-MAIL ADDRESS" print or type the e-mail address of the applicant or representative who signs the form.

Submitting Documents to NOP

Documentation may be submitted as printed documents, electronic data, or both. Submitting a complete hardcopy version of the application along with a complete electronic version will help ensure the earliest possible technical review of the application.

When submitting hard copies, documents may be printed on one or both sides of the paper. It is requested, however, that documents be submitted without staples and without protective plastic sleeves in order to allow for easier scanning. Loose leaf paper in ringed binders with section separators is ideal.

Documents submitted electronically should be presented on compact disc (CD) in Adobe® PDF format or a similar, widely-recognized protected format to prevent alteration. E-mailed documentation is also acceptable. Files may be distributed over multiple e-mails to comply with file size limits of some Internet service providers.

Certifiers should submit their complete application package as described above to:

USDA, AMS, TM, National Organic Program
1400 Independence Avenue, SW
Room 4008-South
Washington, DC 20250
Attention: Certifier Accreditation
Email: NOPCertifier@usda.gov

Documentation should be sent via Federal Express, United Parcel Service or other express delivery service in order to ensure timely delivery to NOP offices. Delivery services that require a telephone number should reference the NOP main office number (202) 720-3252.

Approval

Miles V. McEvoy
Associate Deputy Administrator
National Organic Program

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Submitting Annual Lists of Certified Operations

Purpose and Scope

This instruction provides procedures for submitting annual lists of certified operations to the National Organic Program (NOP). These procedures apply to all NOP accredited organic certification agencies.

Regulatory References

7CFR Part 205.501(a) (15) (ii) of the NOP regulations requires that accredited certifying agents (ACAs) submit each year as of January 2nd a list of certified operations, including the name, address, and telephone number of each operation granted certification during the preceding year. Paragraph 205.504 (b) (5) (ii), further provides for applicants to make available the type(s) of operation, products produced, and the effective date of the certification. Pursuant to these regulatory references, the NOP requires all ACAs to submit complete lists of certified operations as described in this instruction.

Policy

On January 2nd of each calendar year, certifiers must submit a complete list of certified operations granted certification during the preceding year. This list must include the following information:

- Name of certified operation
- Scope of certification
- Name, address, and telephone number of contact person
- List of products produced – *Note: All ACAs must supply this information by January 2, 2009.*

In addition, certifiers may report:

- Fax number
- E-mail address

Certifiers that submit lists of certified operations within five business days of the January 2nd date will be considered meeting this requirement. Certifiers that do not submit lists within the required time frame will be considered in noncompliance with the NOP regulations.

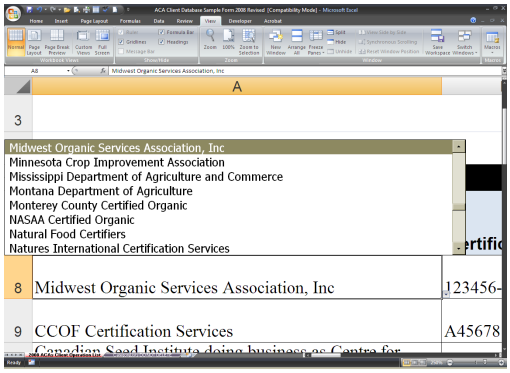
Submit lists electronically via email, compact disc (CD), or other media as described later in this instruction. This instruction also includes a Microsoft Excel format recommended to be used to submit lists to the NOP. Other media or hardcopy lists may be submitted. However, certifiers that submit lists in other formats may be charged a processing fee pursuant to paragraph 205.640 of the NOP regulations.

The NOP will consolidate all submitted lists of organic certified operations and publish a complete list of certified operations on the NOP website in Adobe PDF format.

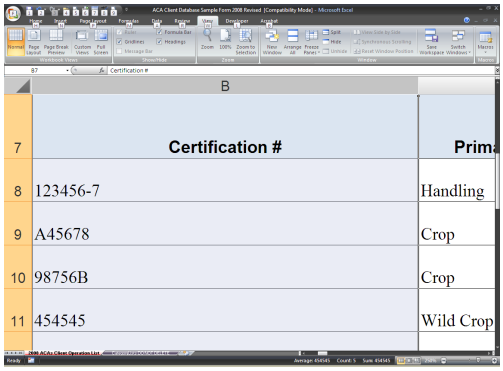
Procedures

Lists should be submitted in Microsoft Excel spreadsheet format according to the format described below:

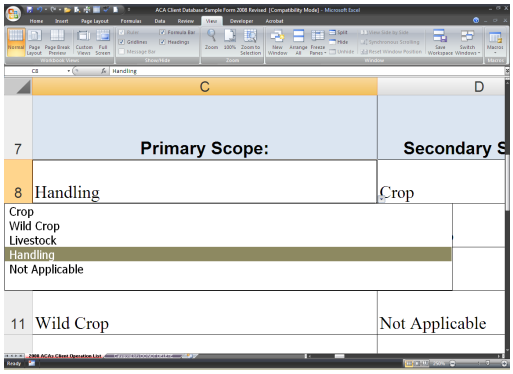
- **Certifying Agent –** *Enter the name of the certifying agent that is certifying the operation from the drop down list provided. Either acronym or full name may be used, as long as it is consistent throughout the document;*



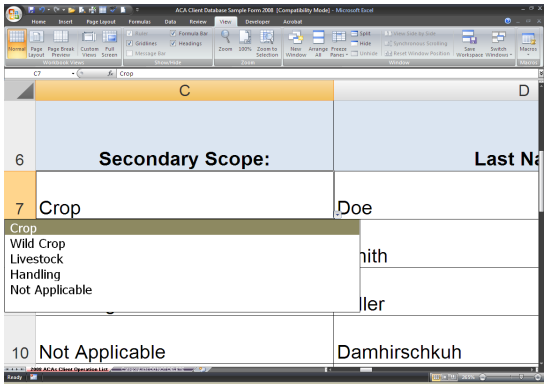
- **Certification #** – *Enter the number of the certificate issued to the operation. If there is more than one certificate issued make separate entries;*



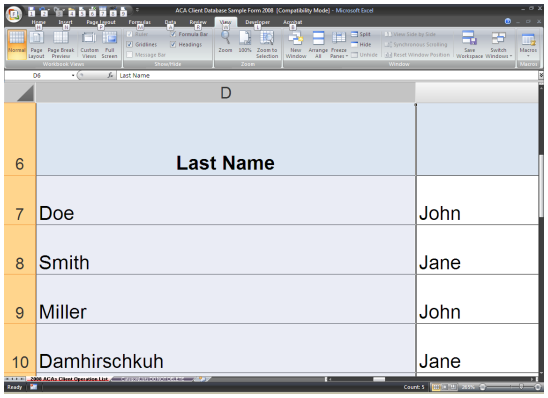
- **Primary Scope** – *Enter Crop, Wild Crop, Livestock, Handling, from the drop down list in the form; NOTE: Not Applicable and entries other than the four listed above are not acceptable in this column;*



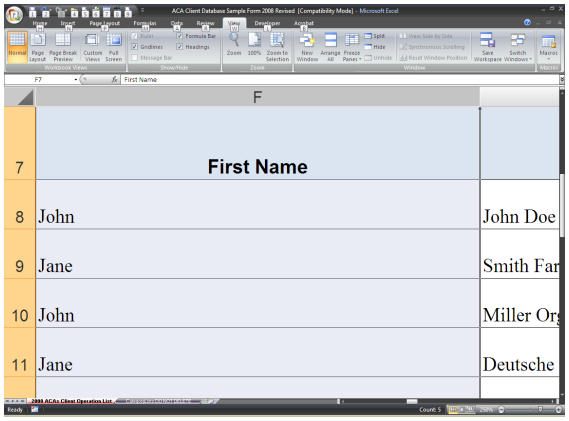
- **Secondary Scope** – If more than two scopes are listed on a single certificate, make a separate entry for the additional scopes. *Enter Crop, Wild Crop, Livestock, Handling, or Not Applicable from the drop down list in the form; NOTE: Not Applicable may be chosen for this column if operation only has one scope;*



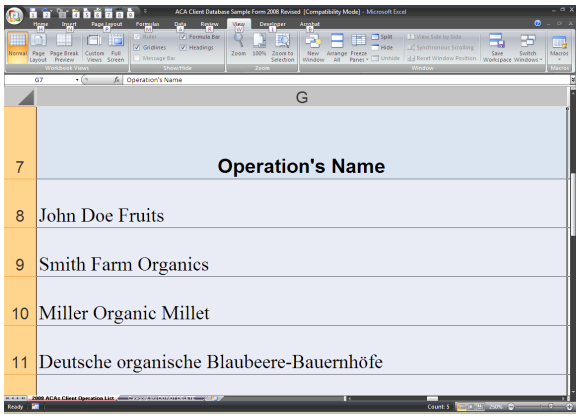
- **Last Name** – *Enter the complete last name of the primary contact for the certified operation;*



- **First Name** – *Enter the complete first name of the primary contact for the certified operation;*

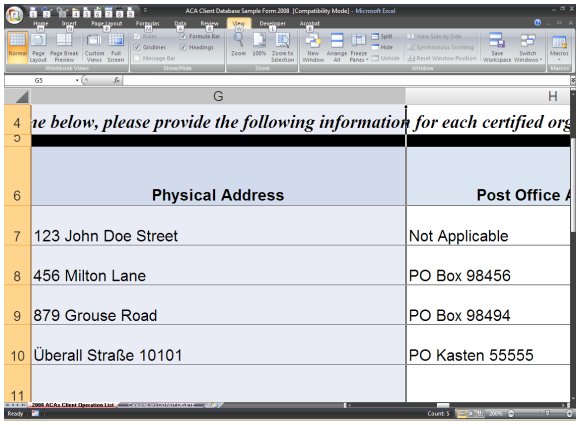


- **Operation's Name**– *Enter the complete name of the operation that has been certified;*



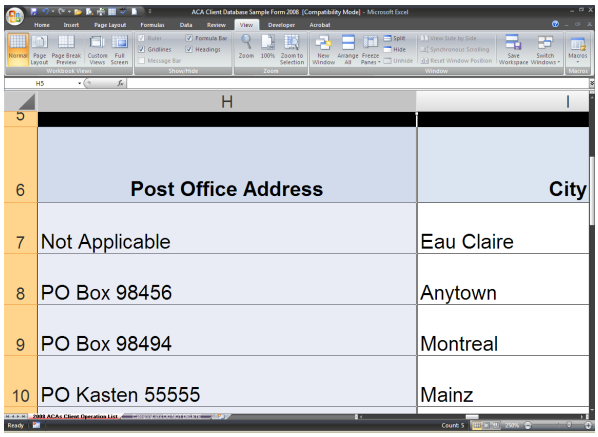
	G
7	**Operation's Name**
8	John Doe Fruits
9	Smith Farm Organics
10	Miller Organic Millet
11	Deutsche organische Blaubeere-Bauernhöfe

- **Physical Address** – *Enter the complete street address of the certified operation;*



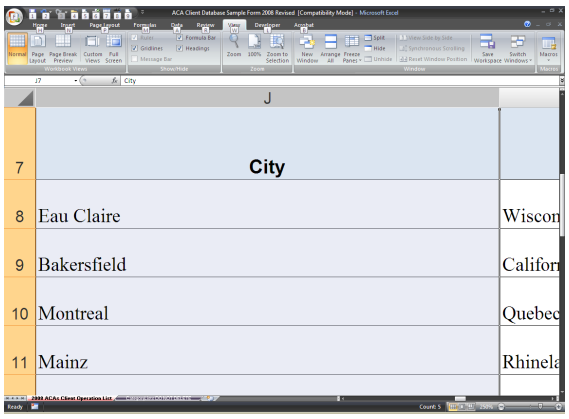
	G	H
4	*ıe below, please provide the following information for each certified org*	
6	**Physical Address**	**Post Office A**
7	123 John Doe Street	Not Applicable
8	456 Milton Lane	PO Box 98456
9	879 Grouse Road	PO Box 98494
10	Überall Straße 10101	PO Kasten 55555
11		

- **Post Office Address** – *Enter a complete mailing address here if other mail is not received at the physical street address of the organic certifier; and*



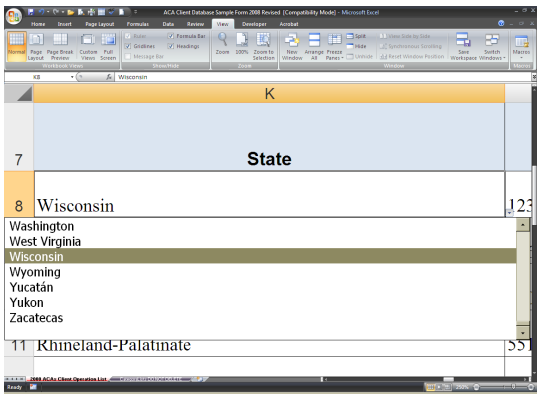
	H	I
6	**Post Office Address**	**City**
7	Not Applicable	Eau Claire
8	PO Box 98456	Anytown
9	PO Box 98494	Montreal
10	PO Kasten 55555	Mainz

- **City** – *Enter the city, town, township, or parish;*



	J
7	City
8	Eau Claire
9	Bakersfield
10	Montreal
11	Mainz

- **State** – *Enter the state or commonwealth from the drop down list provided; if your state is contained in the list, scroll to the end of the list and choose the blank space provided, then type in the name of your state;*

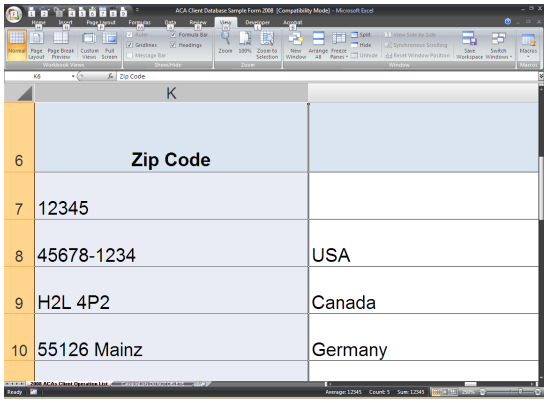


	K
7	State
8	Wisconsin

Washington
West Virginia
Wisconsin
Wyoming
Yucatán
Yukon
Zacatecas

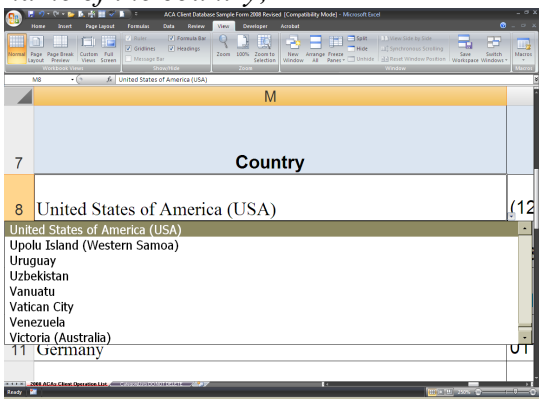
11 Rhineland-Palatinate

- **Zip Code**– *(U.S. - enter 5 digit zip + 4 e.g. 12345-7890); Internationally (postal code + city/town/locality/postal district/state/province abbreviation), (city/town/locality/country/island name + postal code), or (country code + postal code + city/town/locality);*

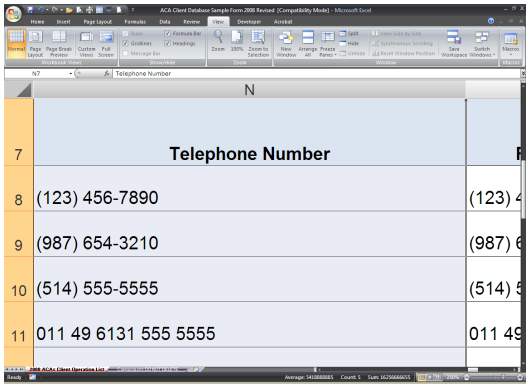


	K	
6	Zip Code	
7	12345	
8	45678-1234	USA
9	H2L 4P2	Canada
10	55126 Mainz	Germany

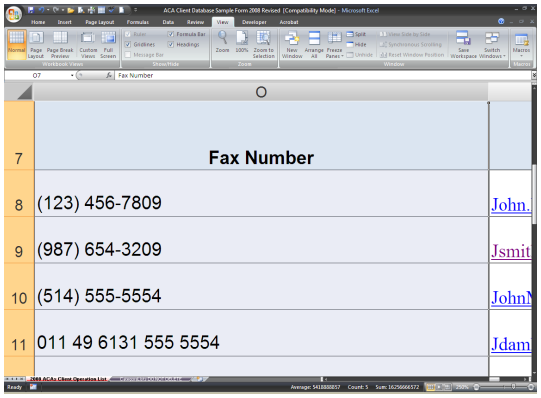
- **Country** – *Enter the country where the operation is located from the drop down list provided. If the country is not on the list provided, scroll down to the blank space provided, select it, then type in the name of the country;*



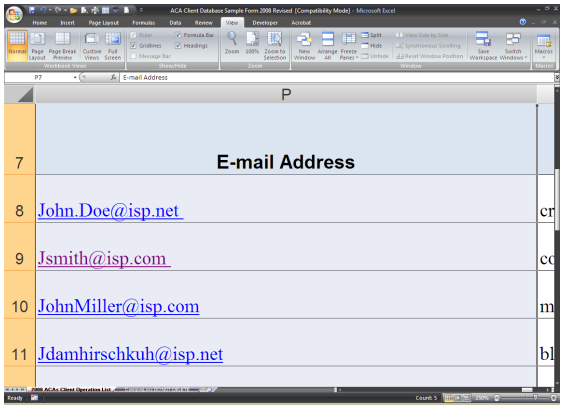
- **Telephone number** – *Enter the country code and the area code if outside the U.S. (e.g. 011-49-6131-555-5555 (international); (domestic) (123) 456-7890).*



- **Fax number** –*Enter the country code and the area code if outside the U.S. (e.g. 011-49-6131-555-5554); (domestic) (123) 456-7809.*

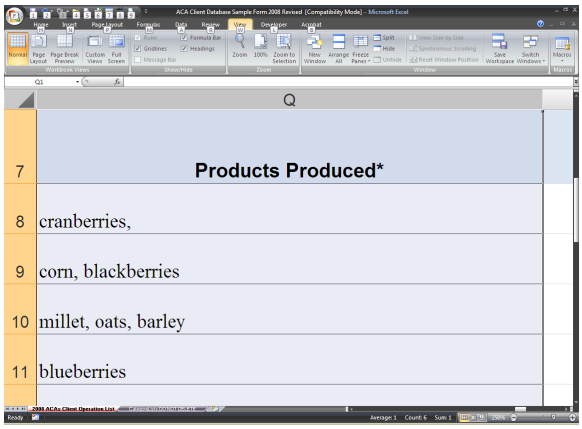


- **E-mail Address** – *Enter the complete e-mail address of the contact person for the certified operation. This will be in the format of the name@internetserviceprovidername.com or name@internetserviceprovider.net.*



	P
7	**E-mail Address**
8	John.Doe@isp.net
9	Jsmith@isp.com
10	JohnMiller@isp.com
11	Jdamhirschkuh@isp.net

- **Products Produced*** – *Enter up to five general types or specific products produced by the certified operation. Note: All ACAs must supply this information by January 2, 2009.*



	Q
7	**Products Produced***
8	cranberries,
9	corn, blackberries
10	millet, oats, barley
11	blueberries

Submitting Documents to NOP
Submit the annual list(s) of operations to the NOP as a *Microsoft Excel* spreadsheet to the following address.

CD's or hardcopy media: USDA, AMS, TM, National Organic Program
1400 Independence Avenue, SW
STOP 0268, Room 4008-South
Washington D.C. 20250-0268

E-mail (Maximum 1 MB file size): MaryLou.Lusby@usda.gov

Send CDs or other media via Federal Express, United Parcel Service, or other express delivery service in order to ensure timely delivery to NOP offices. Delivery services that require a telephone number should reference the NOP main office number (202) 720-3252.

Submitting Updated Lists to the NOP
Certifiers may submit updated lists of certified operations throughout the year. To update the list, submit a complete list as described above. NOP will delete previously submitted information and replace it with the updated information.

Equivalence Determination Procedures

1. Background

The Organic Foods Production Act of 1990 ()FPA), 7 U.S.C. Section 6501, et. seq., as amended, regulates the production, handling, processing, and labeling of all raw or processed agricultural products to be sold, labeled, or represented as organic in the United States. Section 6505(b) of the law provides that "[i]mported agricultural products may be sold or labeled as organically produced if the Secretary determines that such products have been produced and handled under an organic certification program that provides safeguards and guidelines governing the production and handling of such products that are at least equivalent to the requirements of [OFPA]."

This document describes the procedures to be used by the United States (U.S.) to: 1) render equivalence determinations, in accordance with the Department of Agriculture's (USDA) existing statutory and regulatory authority, for those countries seeking to export organic products to the U.S. and, 2) gain recognition and acceptance by importing countries of U.S. organic exports produced in conformity with the USDA National Organic Program (NOP). The procedures described in this document will be adhered to in order to render an equivalence determination of another country's organic program and to obtain separate acceptance of the NOP for any country seeking an equivalence agreement with the United States.

2. Policies

The burden of demonstrating equivalence rests with the exporting country. Equivalence means that the U.S. has determined that a foreign government's technical requirements and conformity assessment system meet or exceed the requirements of OFPA and its implementing regulations. The term 'technical requirements' refers to a system of relevant laws, regulations, regulatory practices, and procedures that address the production, handling, and processing of organic agricultural products. The term 'conformity assessment system' refers to all activities undertaken by a government to ensure that the applicable technical requirements for the production, handling, and processing of organic agricultural products are fully and consistently applied from product to product. U.S. equivalence determinations will be transparent, enabling all interested parties and the public at large to understand the basis for U.S. actions.

To evaluate equivalence, the NOP will conduct a side-by-side comparison of the U.S. technical requirements and conformity assessment system with the foreign government's technical requirements and conformity assessment system to determine similarities and differences that may exist between the two countries.

In making an equivalence determination for the U.S. NOP, USDA may ask the foreign government for permission to engage in one or more on-site audits. The purpose of the on-site audit(s) is to verify that the foreign government's conformity assessment system for the country's production, handling, and processing of organic agricultural products is functioning as indicated in the document review.

Equivalence determinations could encompass some or all raw or processed organic agricultural products. Even within the category of products being examined (e.g., livestock products), equivalence may exist for some products but not for others.

3. Procedures

3.1 Foreign governments seeking an equivalence determination to the U.S. NOP should contact USDA in writing. The letter requesting a determination should be sent to:

USDA-AMS Administrator
1400 Independence Avenue, SW
Room 2646-S. Stop 0268
Washington, DC 20250
Attn: NOP Equivalence Request

3.2 The letter should be sent on the official letterhead of the foreign government's competent authority and should include the following information:

1. The competent authority's contact person(s) and contact information;
2. The legal basis for the foreign government's technical requirement(s), and conformity assessment system;
3. The scope of the requested determination, (e.g., all agricultural products, livestock products, crop products);
4. A detailed side-by-side comparison between the foreign government's technical requirements and those technical requirements set forth in the OFPA and its implementing regulations;
5. Detailed documentation supporting the foreign government's position that, where it uses different technical requirements, the different technical requirements meet or exceed OFPA and its implementing regulations; and
6. Detailed documentation explaining the foreign government's conformity assessment program.
    a. The documentation should address the conformity assessment program's:
        - Legal authority;
        - Documented specifications or procedures; and
        - Compliance and enforcement process and procedures.

    b. The documentation should be sufficient to demonstrate the foreign government's ability to:
        - Identify and evaluate the degree of non-compliance related to the technical requirements;
        - Investigate non-compliances to determine what corrective or enforcement actions are necessary;
        - Issue corrective or enforcement actions in cases of violation;
        - Monitor implementation/closure of corrective or enforcement actions; and
        - Accurately and in a timely manner communicate with its regulated entities.

7. Documentation must be submitted in English.

3.3 USDA will prepare and distribute a letter acknowledging the foreign government's request for equivalence determination. The letter will designate a USDA staff contact. During the interim period, USDA will examine the documentation for completeness and promptly inform the applicant in a precise and complete manner of all deficiencies.

3.4 Following discussions with the foreign government, the U.S. equivalence determination will be transmitted to the foreign government by letter from the appropriate U.S. official. The letter will recognize the equivalence of the foreign system and will include, at a minimum, the following:

1. The scope of agricultural products covered under the determination;
2. The obligation to notify USDA of any changes in the technical requirements and/or conformity assessment system that may affect the original determination of equivalence;
3. The obligation to provide USDA with information regarding corrective or enforcement actions imposed on certifying agents by competent authority;
4. The obligation to cooperate with USDA, to the extent possible, when notified in advance, with any USDA inspections or audits;
5. In the case of a limited equivalence determination, the obligation to adhere to any limitations or restrictions regarding the use of certain methods, procedures, processes, or substances in products to be sold, labeled, or represented as organic in the United States; and
6. The equivalence determination may include additional obligations on a case-by-case basis. Obligations stated in equivalence determinations may vary in some respects depending on the circumstances of the particular determination.

Miles V. McEvoy
Deputy Administrator
National Organic Program

Approved on August 25, 2010

Recognition and Monitoring of Foreign Government Conformity Assessment Systems

1. Purpose

This document establishes the standard operating procedures used by the National Organic Program for determining whether the conformity assessment systems used by a foreign government to accredit organic certification bodies meet the applicable requirements of the Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6501. et seq.) and its implementing regulations (7 CFR 205. et seq.). In addition, this document establishes the standard operating procedures used by USDA to monitor performance of conformity assessment systems to which recognition has been extended.

2. Scope and Terms of Recognition Agreements

A recognition determination assesses only the foreign government's conformity assessment system. To be sold, labeled or represented in the United States as organic, raw or processed organic agricultural products certified by certifying agents accredited by the recognized foreign government must be certified in compliance with the OFPA and its implementing regulations.

Upon successful completion of a document review and, as applicable, on-site verification audit, the USDA would recognize the foreign government's conformity assessment system as being identical in force and effect to the applicable requirements of the OFPA and its implementing regulations and therefore competent to verify full compliance with the NOP technical requirements.

Recognition determinations cover agricultural products produced or handled within the foreign government's borders and include ingredients of third countries that are substantially transformed and certified under the supervision of the foreign government's conformity assessment system. Alternatively, as provided by Section 205.500 (a), (7 CFR §205.500 (a)), USDA will accept at any time an application for direct accreditation to perform certification activities under the NOP from any qualified foreign private or governmental certifying agent. USDA may accredit foreign certifying agents in a foreign country as well as recognize the foreign government's conformity assessment system.

3. Background

The burden of demonstrating that a foreign government's conformity assessment system meets the applicable requirements of the OFPA and its implementing regulations rests with the requesting government.

For the purposes of this document, a conformity assessment system will be recognized as meeting the applicable requirements of the OFPA and its implementing regulations when the National Organic Program has determined that the requesting government's conformity assessment system is identical in force and effect to the applicable requirements of the OFPA and its implementing regulations, and when the NOP has determined, through objective analysis, that the conformity assessment system is competent to carry out specific tasks.

This document uses "conformity assessment system" to mean all activities undertaken by the foreign government to ensure that the applicable technical requirements for the production, handling, and processing of organic agricultural products are fully and consistently applied.

This document does not address any other requirements (e.g., plant protection, animal health, or food safety) necessary to import food and agricultural products into the United States. These procedures are for the internal use of USDA, do not create or confer any rights for or on any person or entity and do not operate to bind USDA or the public.

4. Reference Documents

4.1 United States Code of Federal Regulations Title 7, §205.500 (c) (1) provides that in lieu of direct accreditation, USDA may determine, upon the request of a foreign government, that the standards under which the foreign government authority accredited the foreign certifying agent meet the requirements of the OFPA and its implementing regulations.

4.2 ISO 17011:2004, General requirements for accreditation bodies accrediting conformity assessment bodies.

4.3 ISO 19011 Guidelines for quality and/or environmental systems auditing.

4.4 ISO Guide 65 General requirements for bodies operating product certification systems

5. Responsibilities of Recognized Government Accrediting Bodies

Government agencies recognized to accredit certifying bodies for NOP certification activities are responsible for conducting specific activities related to NOP certification as described in this section. Such responsibilities are included in the Terms of Recognition agreed to by the accrediting body.

5.1 Notification of changes to the laws and operating procedures of the accrediting body

Any changes to the laws or regulations related to the agency's ability to accredit to the NOP must be notified in advance to the NOP. Significant change to the approved procedures may prompt review or cancellation of the agreement if it is determined that such changes materially affect the foreign government's ability to carry out the agreed upon accreditation responsibilities.

5.2 Conducting document reviews and onsite evaluations

Recognized government bodies must conduct onsite reviews of certifying bodies; one initial review prior to accreditation and additional reviews in compliance with ISO Guide 17011.

5.3 Review and disposition of appeals

Recognized government agencies are responsible for receiving and handling all appeals of decisions made by accredited certifying agents in their country.

5.4 Complaints

Recognized bodies are responsible for investigating and responding to complaints regarding NOP certified organic products within their sovereign borders.

5.5 Information collection and reporting

Recognized bodies are responsible for collecting and reporting routine information regarding NOP certified operations and products, including:

1. By January 2nd of each year, the name, contact information, and products produced by operations certified to each scope of the NOP regulations. This information will be provided in the same format prescribed for directly accredited certifying agents.
2. A current list and complete contact information of all NOP certifying bodies accredited under the agreement:
3. An annual report of the types and quantities of NOP certified organic products exported under the recognition agreement, and
4. Notices of noncompliances, proposed adverse actions, and final adverse actions issued to NOP certified operations.

6. Application for Recognition

6.1 Foreign governments seeking a recognition determination should contact AMS in writing.

6.2 The letter requesting a determination should be sent to:

Administrator; AMS;
1400 Independence Avenue, SW;
Room 2643 South Agriculture Building;
Washington, DC 20250,
Attn: NOP Recognition Request.

6.3 The letter should be sent on the official letterhead of the foreign government's competent authority and should include the following information:

1. The competent authority's contact person(s) and contact information;
2. ISO 17011 evaluation matrix. NOP 2014-1.
3. Detailed documentation explaining the foreign government's conformity assessment program. The documentation should address:
    a. The conformity assessment program's legal authority;
    b. The conformity assessment program's documented specifications or procedures;
    c. The conformity assessment program's compliance and enforcement process and procedures.

4. The documentation must be sufficient to demonstrate the foreign government's ability to:
    a. Identify and evaluate the degree of non-compliance related to the technical requirements;
    b. Investigate non-compliances to determine what corrective or enforcement actions are necessary;
    c. Issue corrective or enforcement actions in cases of violation;
    d. Monitor implementation/closure of corrective or enforcement actions; and
    e. Accurately and in a timely manner communicate with its regulated entities.

6.4 Documentation must be submitted in English.

6.5 USDA will prepare and distribute a letter acknowledging the foreign government's request for recognition determination. The letter will designate a USDA staff contact.

6.6 During the interim period, USDA will examine the documentation for completeness and promptly inform the applicant in a precise and complete manner of all deficiencies.

7. Evaluation of Application

7.1 The application packet will be reviewed by NOP staff for completeness and the ability of the foreign government's conformity assessment system to comply with NOP regulations.

7.2 The foreign government will be notified if the application is incomplete or does not comply with NOP regulations.

7.3 If the document review determines that the foreign government's conformity assessment system is able to comply with NOP regulations then an onsite review will be conducted.

8. Onsite Reviews

The purpose of the on-site audit(s) is to determine whether the foreign government's conformity assessment system for the country's production, handling, and processing of organic agricultural products is functioning as indicated in the document review. The on-site audit evaluates compliance with OFPA and the NOP regulations.

8.1 Onsite reviews will be conducted according to ISO 19011.

8.2 The audit includes an assessment of:

1. The conformity assessment system,
2. The certification bodies, and
3. The foreign country's organic producers and handlers.

9. Final Recognition

9.1 After the document review and the on-site audit are complete a final recommendation by the NOP will be advanced to AMS administrator for approval.

9.2 If approval is granted by the AMS administrator, the foreign government representative will be notified.

9.3 When finalized, USDA will record the determination with the foreign government through an exchange of letters.

9.4 The documentation recording the recognition will include, at a minimum, the following requirements:

1. The obligation of the foreign government to notify USDA of any legislative or administrative changes in the conformity assessment system;
2. The obligation of the foreign government to immediately report to USDA any non-compliance regarding the application of the NOP technical requirements to products exported to the United States;
3. The obligation of the foreign government to allow USDA representatives to conduct on-site audits and reviews, when properly notified in advance, of such reviews by USDA; and
4. The obligation of the foreign government to provide annually to USDA a report which contains:
    a. By January 2nd of each year, the name, contact information, and products produced by operations certified to each scope of the NOP regulations. This information will be provided in the same format prescribed for directly accredited certifying agents.
    b. A current list and complete contact information of all NOP certifying bodies accredited under the agreement:
    c. An annual report of the types and quantities of NOP certified organic products exported under the recognition agreement, and
    d. Notices of noncompliances, proposed adverse actions, and final adverse actions issued to NOP certified operations.

10. Monitoring of Recognition Agreements

10.1 The NOP will ensure the satisfactory performance of the recognition determination by monitoring the performance of the foreign government's conformity assessment system.

10.2 In addition, the NOP will perform at least one on-site surveillance audit every 2 years during which the recognition remains in force.

10.3 The on-site surveillance audit(s) will be conducted under the provisions of ISO 17011 and ISO 19011.

11. Suspension and Termination of Recognition Agreements

11.1 The NOP may suspend or terminate the recognition agreement if the foreign government fails to maintain its conformity assessment system in compliance with OFPA and the NOP regulations.

11.2 Recognition agreements may be suspended or terminated for any reason with thirty days written notice by either party.

Miles V. McEvoy
Deputy Administrator
National Organic Program

Approved on August 16, 2010

Complaint Handling Standard Operating Procedures

1. Purpose & Applicability

This document outlines the procedures for handling complaints that are filed under the Organic Foods Production Act (OFPA) of 1990 (7 USC 6501 et seq.) and its related laws and regulations. These operational procedures apply to National Organic Program (NOP) Compliance & Enforcement Division (C&ED) personnel and any other Agricultural Marketing Service (AMS) personnel delegated the responsibility for enforcing the OFPA and its related laws and regulations.

2. Background

The NOP was established as a result of the OFPA that requires the U.S. Department of Agriculture (USDA) to develop national standards for organically produced agricultural products to assure consumers that agricultural products marketed as organic meet consistent, uniform standards. The OFPA and NOP regulations (7 CFR 205) require that agricultural products labeled as organic originate from farms and handling operations certified by a State or private entity that has been accredited by USDA.

The NOP is a marketing program housed within the USDA, Agricultural Marketing Service. 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 USDA standards. It enforces organic production, handling, and labeling standards.

Because of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. § 601 note), the complaint procedures are written in an attempt to gain cooperation between the Agency and small businesses that is resolution oriented rather than punitive.

3. NOP Organizational Structure

The NOP is headed by a Deputy Administrator and organized into four divisions: (1) Standards Division; (2) Accreditation, & International Activities Division; (3) Compliance & Enforcement Division; and Office of the Deputy Administrator.

3.1 The *Standards Division (SD)* is responsible for NOP's rulemaking functions. Specifically, the SD:

- Develops new regulations and amendments to existing NOP regulations;
- Provides policy clarification with respect to the interpretation of the regulations;
- Reviews petitions for materials to be added or removed from the National List.

3.2 The *Accreditation & International Activities Division (A&IAD)* is responsible for the accreditation of certifying agents. Specifically, the A&IAD:

- Accredits and monitors performance of certifying agents;
- Helps to evaluate applications, and negotiates, monitors and services recognition and equivalence agreements with foreign governments;
- Approves the establishment of State Organic Programs and monitors their performance;
- Conducts training programs for certifying agents; and
- Reinstates suspended certifications and accreditations.

3.3 The *Compliance & Enforcement Division(C&ED)* is responsible for ensuring compliance with the OFPA and its implementing regulations at Title 7, Section 205 of the CFR. Specifically, the C&ED:

- Processes and investigates complaints alleging violations of NOP regulations;
- Conducts proactive compliance and outreach activities; and
- Enforces organic production, handling, and labeling standards.

3.4 The *Office of the Deputy Administrator (ODA)* is responsible for providing management oversight of SD, A&IAD, and C&ED. Specifically, the ODA:

- Manages the NOP
- Administers the NOP Cost Share Program
- Interacts and assists with the National Organic Standards Board

In addition to the four NOP divisions, two other AMS organizations – Compliance & Analysis Program and Audit, Review & Compliance Branch - perform duties and responsibilities in support of the NOP.

3.5 The AMS Compliance & Analysis Program (C&A) performs the following functions for the NOP:

- Appeals Function: the Appeals Staff reviews and analyzes appeals, and drafts decisions on behalf of the Administrator; and
- Investigative Function: C&A assists the NOP in investigating allegations of severe and willful violations for possible civil or criminal penalties. C&A previously handled the entire NOP complaint system. As of October 1, 2008, the newly established NOP C & E Division assumed this broad function. C&A continues to process to completion complaints that were filed prior to October 1, 2008.

3.6 The Audit, Review & Compliance Branch (ARC), housed in the AMS Livestock and Seed Program, conducts accreditation audits for the NOP. Specifically, the ARC:

- Conducts document adequacy reviews and reports the results;
- Plans and conducts onsite compliance audits, and reports the results;
- Reviews and comments on proposed corrective actions to non-compliances identified during document adequacy reviews or onsite compliance audits; and
- Collects hourly user fees and travel expenses for all NOP accreditation-related services.

4. C&E Roles and Responsibilities

4.1 The *C&E Division* is responsible for managing the NOP complaint system.

4.2 The *Complaint Coordinator* checks the various mechanisms through which information is received and records all incoming correspondence in the C&ED Correspondence Log. The Complaint Coordinator, in consultation with the Division Director, forwards potential complaints to the Compliance Specialists for investigation. The Coordinator also keeps the Division Director and ARC apprised of complaint activities.

4.3 The *Compliance Specialists* investigate NOP complaints and update case database and case folders as cases progress.

4.4 The Division Director provides oversight of the NOP complaint handling process to ensure consistent and effective outcomes. The Director also keeps the NOP Deputy Administrator apprised of significant issues and activities reflected by the complaints.

5. Communication with the NOP

The NOP receives information from the public through the following mechanisms:

- Telephone hotline: (202) 720-8311;
- Fax: (202) 205-7808;
- Email: NOPcompliance@usda.gov; and
- Postal Mail:

NOP Compliance and Enforcement Branch
Agricultural Marketing Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Mail Stop 0268, Room 2646-S
Washington, D.C. 20250-0268

6. Review of Incoming Correspondence

6.1 All incoming correspondence to the Division is reviewed and recorded in the C&E Division Correspondence Log (See NOP 4000 - Incoming Correspondence Handling Procedures) by the Complaint Coordinator.

6.2 When issues clearly fall outside the NOP jurisdiction, the incoming communication is treated as correspondence and closed out with an appropriate response (Template 1).

6.3 When a communication does not allege violations of NOP regulations, but raises NOP related questions that can be addressed by the Division, a response, preferably by email, is provided.

6.4 When a communication does not allege violations, but raises policy issues or asks complex questions about the NOP, it is referred to other NOP Divisions.

6.5 When a communication alleges violations, it is forwarded to a Compliance Specialist for investigation.

6.6 All referral and assignments are generally completed within a week of the receipt of a communication.

7. NOP Complaints

Any person may file a complaint if he or she believes a violation of the OFPA or its implementing regulations has occurred or is about to occur. Instructions for filing a complaint are posted on the NOP website at www.ams.usda.gov/nop/compliance/filecomplaint.html. Complainants are advised to submit as much as information as possible regarding their concerns, i.e. who, what, when, where, why, how, and any supporting documentation.

The NOP compliance staff through investigative and compliance monitoring activities can also generate complaints.

It is the NOP's policy to investigate all complaints it receives that allege violations of NOP rules and regulations.

8. The NOP Complaint Handling Process

The NOP complaint handling process consists of three processes: Intake, Investigative, and Case Closing.

9. Intake Process

Upon receipt of a communication, the Complaint Coordinator reviews and confirms that it is a complaint. The Coordinator enters the complaint into the NOP Complaint Database and assigns a case number. The Coordinator establishes a case file and starts a Complaint Investigation Chronology Log (Template 2). Additional activities include:

9.1 Acknowledgment of Complaints

9.1.1 An acknowledgement of receipt is provided to the complainant when the complainant's identity is disclosed (the identity of the complainant is not actively pursued in order to protect the release of such information to the public or the subject of the complaint). Acknowledgements are auto-generated when complaints are filed through NOPcompliance@usda.gov and manually generated when Complaints are filed through other mechanisms.

9.1.2 Complaints are generally acknowledged immediately when filed through the NOPCompliance@usda.gov and within 72 hours if filed by other means.

9.2 Referral of Complaints

9.2.1 Complaints Referred to State Organic Programs

1. When a complaint involves a certified or non-certified operator operating in a state where there is an approved State Organic Program (SOP), it is referred (Template 3) to the SOP. The SOP may refer the case to the certifying agent, dismiss, resolve, initiate noncompliance action, and/or refer the case back to NOP. Cases referred to SOPs are handled by the SOPs according to their particular accreditation agreements.

2. Complainants are notified of such referrals (Template 4).

3. An SOP may refer cases back to the NOP for the following reasons:
   a. Failure to resolve the case;
   b. Lack of expertise to resolve a case;
   c. Lack of resources or authority to pursue civil action; or
   d. A specific request for NOP assistance.

4. Complaints Referred to Accredited Certifying Agents
   a. When a complaint involves a certified operator in a state where there is no approved SOP, it is referred to the accredited certifying agent (ACA) on record.
   b. The Compliance Specialist issues a letter (Template 5) to the ACA and requests that the ACA investigate the validity of the alleged noncompliance. Alleged issues are described in as much detail as given in the complaint and a 30-day deadline for response is given. At times, specific instructions on what needs to be verified are provided.
   c. The ACA investigates the complaint and reports its findings to C&ED along with supporting documentation. Any noncompliances found will be addressed by C&ED in order to ensure proper adverse action procedures are followed and the NOP can utilize civil penalties when appropriate.
   d. Compliance Specialists conduct follow-up activities on cases referred to ACAs. Follow-up activities are generally concluded within 30 days of receipt of the requested information and documents.
   e. ACAs may refer cases back to the NOP for the following reasons:

      1. Failure to resolve the case;
      2. Lack of expertise to resolve a case;
      3. Lack of resources; or
      4. A specific request for NOP assistance.

9.3 Complaints for C&E Branch Investigation

9.3.1 When a complaint alleges violations by a SOP or ACA, or by a non-certified operator, it is retained for C&E Division investigation. The C&E Division may also handle and/or coordinate the investigation of complaints where it deems necessary, e.g. involving multiple ACAs.

9.3.2 These complaints are generally investigated within a target of 90 days.

9.4 Notification of Complaints to ARC and Other NOP Branches

9.4.1 The Complaint Coordinator notifies, on a biweekly basis, ARC of new complaints and alleged issues.

9.4.2 The Complainant Coordinator notifies the A&IAD of new complaints and alleged issues when appropriate

10. Investigative Process

This process is managed by Compliance Specialists and consists of two categories of activities: (1) following up on complaints referred to ACAs and (2) conducting investigations of complaints assigned.

10.1 Following up on Complaints Referred to ACAs

10.1.1 Compliance Specialists ensure that complaints referred to ACAs are properly investigated. Specifically, Compliance Specialists:

1. Ensure that information requested in the referral letters is submitted within the proposed timelines and grant extensions where appropriate. Extensions and unforeseen delays are properly documented.
2. Upon receipt of information, evaluate whether actions taken by ACAs are adequate to address the complaints.
3. Determine whether further investigation by the ACAs or by the NOP is warranted.
4. Draft appropriate closure documents to the complainant, the ACA and/or the operator.

10.2 Conducting Investigations of Complaints Retained for C&E Division Investigation

The following procedures provide general guidelines for the investigative process.

1. Investigation is generally initiated within a week after a case is assigned.
2. Initial contact to the charged party and the complainant is conducted by telephone, whenever possible. The reason for the call and information requests are discussed and clear deadlines for information submission are agreed upon. Generally, response time should not exceed 2 weeks. A follow-up email (Template 6) capturing the conversation is sent immediately afterwards.
3. If there is no telephone number available or there is no response to telephone messages within a reasonable timeframe, an initial contact letter (Template 7) is sent by electronic and/or regular mail requesting the recipient to respond within 5 days.). Once contact is made, Step b is followed. When there is no response to the contact letter, a warning letter (Template 8) is sent.

4. If further information indicates that the alleged violation does not fall within the scope of OFPA or NOP Regulations, or where information in the complaint is inadequate to pursue further action, the case is dismissed.
5. If information is not provided within the deadline and no extension is requested, another letter (Template 9) is sent advising the recipient that we expect to receive the information within a week and we will proceed with the case after that based on current information in the file.
6. All information gathered is analyzed to establish facts that tend to prove or disprove the alleged violations.
7. The investigation is concluded with a Case Closure Memorandum (Attachment 14). For cases involving the issuance of a Notice of Noncompliance, a written Report of Investigation (ROI) (Template 10) is drafted. The ROI outlines the allegations and the applicable statutes and regulations, organizes the findings and supporting evidence to allow for a logical conclusion, and recommends resolution options. Should actions by A&IAD be required, a recommendation requesting such action shall be included in the ROI.
   Complaints may be referred to the AMS Compliance & Analysis Programs for investigation, if the violations are willful and severe and may involve criminal or civil penalties. Compliance Specialists bring such cases to the attention of the Division Director for further action.

11. Case Closing Process

Compliance Specialists conduct the following activities to ensure proper case closure:

1. Compliance Specialists draft relevant closing documents to include:
   a. Notice to Complainant of Case Closure (Template 11);
   b. Notice to ACA – No Violations (Template 12);
   c. Notice to ACA – Noncompliance (issued by A&IAD)(Template 13);
   d. Notice to Certified Operation – No Violations;
   e. Notice to Certified Operation – Noncompliance;
   f. Notice to Uncertified Operation – No Violations;
   g. Notice to Uncertified Operation – Warning Letter (Template 8);
   h. Notice to Uncertified Operation – Noncompliance.
2. Once approved, the documents are finalized and sent to recipients by Fed Ex (United States Postal Service (USPS) if sending to a post office box). When email addresses are available, closure documents can be emailed as PDF files.
3. Compliance Specialists annotate their calendars for further monitoring activities.
4. A Case Closure Memorandum (Template 14) is drafted by the Compliance Specialist and signed by the Division Director.
5. The Complaint Database and case folders are updated and properly closed out.
6. Case files are filed in the file cabinets.

12. Follow-up Procedures (for Closed Cases Where Violation(s) Occurred)

For cases closed with the "Closed – follow-up required" closure category, follow-up activities are conducted 30 to 90 days after case closure, depending on the corrective actions required. An annual review of such cases, up to 20%, based on a random selection, is also conducted at the end of the fiscal year.

13. Document Control and Retention

All documents related to this process are retained for 5 years after the final action.

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Approved on August 16, 2010

United States Department of Agriculture
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NOP 4002
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National Organic Program Enforcement Policy

A. Purpose

This document provides policy and procedural guidelines for taking enforcement actions against violations of the National Organic Program (7 CFR Part 205) and the Organic Foods Production Act of 1990 (Act), as amended (7 U.S.C. 6501 et seq.). Its purpose is to establish appropriate and consistent sanction guidelines for instances where evidence confirms that noncompliances have occurred.

B. Background

The National Organic Program (NOP) was established as a result of the Organic Foods Production Act of 1990 (Act; 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 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 Act and its related regulations.

C. Authority

The Organic Foods Production Act of 1990, as amended (7 U.S.C 6501 et seq.)
Title 7 CFR Part 205 – National Organic Program

D. Types of Enforcement Actions

NOP enforcement actions include the following:

A. Notice of Denial
B. Combined Notice of Noncompliance and Denial
C. Notice of Noncompliance
D. Notice of Proposed Suspension or Revocation
E. Combined Notice of Noncompliance and Proposed Suspension/Revocation
F. Notice of Suspension or Revocation
G. Consent Decree or Settlement Agreement
H. Cease-and-Desist Letter
I. Civil Penalty

Generally, the recipients of enforcement actions fall into three groups: (1) certified operations (including new and renewal applicants); (2) accredited certifying agents; and (3) uncertified operations (not applicants). The following table illustrates the enforcement actions as they apply to the three groups.

	Notice of Noncompliance	Notice of Denial	Notice of Proposed Suspension/ Revocation	Combined Notice	Notice of Suspension/ Revocation	Consent Decree or Settlement Agreement	Cease-and-Desist Letter	Civil Penalty
Applicant for Certification	X	X		X				X
Certified Operation	X		X	X	X	X		X
Accredited Certifying Agents	X		X	X	X	X		
Uncertified Operation						X	X	X

E. Definition and Categorization of Violations

Any deviation from the regulation is a violation and requires the initiation of an appropriate enforcement action to address the noncompliance. In practice, the NOP recognizes that violations have various degrees of severity, incur different consequences, and are treated differently. The following definitions and distinctions provide guidelines for the NOP in determining the different types of enforcement actions to take under different circumstances.

Willful violation refers to an intentional violation of the Act or plain indifference to its requirements.

Minor Noncompliance is defined as a violation that is correctable, does not affect the integrity of the organic system or the organic product, and does not preclude the certification or continued certification of an otherwise qualified organic producer or handler. Examples of a “minor noncompliance” include failure to submit information on time, failure to update the organic system plan, and inadequate record-keeping.

Major Noncompliance is defined as a violation of organic standards that affects the integrity of the organic system or the organic product and precludes the certification or continued certification of a producer or handler. Examples of a "major noncompliance" include the application of a prohibited substance, the commingling of organic with nonorganic products, the contamination of organic products with prohibited substances, and the failure to correct a minor noncompliance.

Organic integrity refers to the qualities of an organic product or production or handling system which are obtained through compliance with National Organic Program requirements and which must be maintained from production through handling to the point of final sale in order for the final product to be labeled and/or marketed as organic.

The distinction between "minor" and "major" noncompliance is particularly relevant in the assessment of civil penalties.

F. Enforcement Actions towards Applicants for Organic Certification

§ 205.405 specifies procedures for denial of certification for applicants for organic certification.

§ 205.681(a) specifies certification appeals procedures.

Issuance of Notices

All notices (noncompliance, denial, combined notice) issued to applicants for certification shall follow procedures specified in § 205.405 and § 205.681(a). The written notification must be sent through certified mail or other service that provides for a signed receipt.

(A) Notice of Noncompliance (NONC)

§ 205.405(a) specifies that when a certifying agency has reason to believe that an applicant for certification is not able to comply or is not in compliance with the requirements of the regulations, the certifying agent must provide a written notification of noncompliance to the applicant. The NONC shall include:

1. A description of each noncompliance;
2. The facts upon which the NONC is based; and
3. The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

The response to the NONC is evaluated. When the corrective action or rebuttal is sufficient for the applicant to qualify for certification, an approval of certification is issued. When the corrective action or rebuttal is not sufficient, a written notice of denial of certification is issued.

(B) Notice of Denial of Certification

§ 205.405(d) specifies that a notice of denial of certification must state:

1. The reason(s) for denial; and
2. The applicant's right to:
   (1) Reapply for certification pursuant to §§205.401 and 205.405(e);

(2) Request mediation pursuant to §205.663 or if applicable, pursuant to a State Organic Program; or
(3) File an appeal of the denial of certification pursuant to §205.681 or, if applicable, to s State Organic Program.

(C) Combined Notice of Noncompliance and Denial of Certification

If a certifying agent has reason to believe that an applicant for certification has willfully made a false statement or otherwise purposefully misrepresented the applicant's operation or its compliance with certification requirements, a combined notice of noncompliance and denial of certification may be issued without first issuing a NONC.

G. Enforcement Actions towards Certified Operations

§ 205.660 - 205.662 specify noncompliance procedures for certified operations.

§ 205.681(a) specifies certification appeals procedures.

Issuance of Notices

All notices (noncompliance, proposed suspension or revocation, combined notice, and notice of suspension/revocation) issued to certified operations shall follow the Compliance and Appeals procedures specified in §205.660 – 205.662, and 205.681(a). When a noncompliance is identified, one of the three options, as specified in A1, A2, and A3 below, can be followed. In most situations, Option A1 is used. The written notification must be sent through certified mail or other service that provides for a signed receipt.

(A1). Notice of Noncompliance (NONC)

§ 204.662(a) specifies that when any noncompliance with the Act or regulations is found, a written notification of the noncompliance shall be sent to the certified operation. The NONC should include:

1. A description of each noncompliance.
2. The facts upon which the NONC is based and the relevant sections of the National Organic Standards, 7 CFR Part 205, that are in violation.
3. A statement that a written response must be received that either corrects the violation or rebuts the alleged violation.
4. The timeline for responding to the NONC. Generally, a response is due within 30 days of receipt of the NONC. The timeline for responding can be changed under exceptional circumstances such as when organic integrity is threatened.
5. Notification that if a written response is not received within the required time period further action, including proposed suspension or revocation of certification may ensue.

The response to the NONC is evaluated. Proposed corrective actions are evaluated to determine if they will correct the violation. Additional documentation and/or inspections may be required to verify that the corrective actions have been implemented. Rebuttals are evaluated to determine if adequate information is provided to reconsider the issuance of the NONC. In the case of rebuttals, additional documentation and/or inspections may be required to verify that no violation has occurred.

When it has been verified that the violation has been corrected (or the rebuttal verifies that no violation occurred), a written notification of noncompliance resolution is sent to the certified operation.

(B). Notice of Proposed Suspension (NOPS) or Revocation (NOPR) of Certification

Following the issuance of a Notice of Noncompliance, when rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period, a written notice of proposed suspension or revocation shall be sent.

Generally speaking, a NOPS should be issued when the noncompliance is still deemed correctable. The intention of a NOPS is to give the operation some time to work on the noncompliance, achieve compliance, and be reinstated. On the other hand, a NOPR should be used when the noncompliance is deemed not correctable, due to the willful and egregious nature of the violation and/or subsequent impact on the organic integrity of the operation.

The NOPS and NOPR include:

1. The reasons for the proposed suspension or revocation;
2. The facts upon which the Notice (NOPS or NOPR) is based and the relevant sections of the National Organic Standards, 7 CFR, part 205 that are in violation;
3. The proposed effective date of the Suspension or Revocation of Certification (minimum of 30 days from the date of the proposed notice plus reasonable mail time);
4. The proposed length of the suspension for NOPS;
5. The impact of suspension or revocation on future eligibility for certification; and
6. The right to request mediation pursuant to §205.663 or to file an appeal pursuant to §205.681, timeline for the request, and contact information.

(A2). Combined Notice of Noncompliance and Proposed Suspension or Revocation (§205.662(c))

A combined NONC and NOPS or NOPR may be issued when correction of a noncompliance is not possible, or when the violations are egregious or willful. Examples of such violations include sale of conventional products as organic, use of prohibited substances, use of conventional feed, and denial of access to pasture. A combined notice should include the following:

1. A description of the noncompliance;
2. The reasons for the proposed suspension or revocation;

3. The facts upon which the Notice (NOPS or NOPR) is based and the relevant sections of the National Organic Standards, 7 CFR, part 205 that are in violation;
4. The proposed effective date of the Suspension or Revocation of Certification (minimum of 30 days from the date of the proposed notice plus reasonable mail time);
5. The proposed length of the suspension for NOPS;
6. The impact of suspension or revocation on future eligibility for certification; and
7. The right to request mediation pursuant to §205.663 or to file an appeal pursuant to §205.681, timeline for the request, and contact information.

(A3). Notice of Proposed Suspension or Revocation – Willful Violations (§205.662(d))

When evidence of willful violation is found, a notification of proposed suspension or revocation can be issued directly without an initial notice of noncompliance. The content of the notice should be similar to the items listed in A2.

(C.) Partial Suspension or Partial Revocation – Willful Violations or Unsuccessful Rebuttal or Correction (§205.662 (c) and (d))

A partial suspension may be issued by the certifying agent or State Organic Program's governing official to suspend a portion of an operation, as applicable to the noncompliance. As an example, a partial suspension may be applicable when an operation is certified for two or more areas of operation (crops, wild crops, livestock, and handling) and when one area of the operation has committed an uncorrectable violation or an unsuccessful rebuttal or correction to a noncompliance.

A partial revocation may be issued as a result of a willful violation or making a false statement under the Act to the Secretary, a State organic program's governing State official, or a certifying agent (§205.662 (g)). A partial revocation is rarely applicable and certifying agents should consult with the NOP prior to issuing a proposed partial revocation. There are very few circumstances that would warrant a partial revocation and each case should be determined on an individual basis.

(D). Notice of Suspension or Revocation (§205.662(e))

A written notification of suspension or revocation shall be sent when a certified operation fails to respond to the Notice of Proposed Suspension or Revocation, or Combined Notice, through request for mediation or appeal.

Appeals §205.681

An applicant for certification may appeal a certifying agent's notice of denial of certification, and a certified operation may appeal a certifying agent's notice of proposed suspension or revocation of certification to the Agricultural Marketing Service Administrator. When the applicant or certified

operation is subject to an approved State Organic Program, the appeal must be made to the State Organic Program.

(A) Dismissed Appeals

Appeals are dismissed when they are untimely filed, or the issues are not appealable.

(B) Sustained Appeals

If the Administrator or State Organic Program sustains (agrees with) a certification applicant's or certified operation's appeal of a certifying agent's decision, the applicant will be issued organic certification, or the certified operation will continue its certification, as applicable.

(C) Denied Appeals

If the Administrator or State Organic Program denies (does not agree with) an appeal, the certifying agent's decision remains effective.

(C). Formal Administrative Proceeding (§205.681(a)(2))

Following a denial of appeal, a formal administrative proceeding will be initiated to suspend or revoke the certification. Such proceeding shall be pursuant to the U.S. Department of Agriculture's Uniform Rules of Practice or the State organic program's rules of procedures.

(D) Appeal Closures without a Decision

Sometimes, appeals are closed without a decision. For example, an appeal can be closed via a stipulated agreement in lieu of issuing a decision.

(NOP 4006 - Appeals to the National Organic Program filed by an National Organic Program Certified Operator or Applicant for Certification provides details for the appeals process.)

Levying of Civil Penalties (§205.662(g)):

In addition to suspension or revocation, any certified operation that knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than $11,000 per violation.

(A). The NOP will consider pursuing civil penalties when there is clear and convincing evidence that a noncompliance is both willful and major.

(B). Accredited certifying agents shall refer such noncompliances to the NOP Compliance and Enforcement Division (C&E) for review and action. The referral should be accompanied with

supporting documentation and should be submitted within 30 days of the verification of willful and major noncompliance.

(C). The NOP C&E will conduct review of such referrals, based on documentation submitted by the accredited certifying agents and/or appeal decisions and files. The NOP will recommend civil penalties against operations that have willful or major violations of the OFPA or the NOP regulations.

H. Enforcement Actions towards Accredited Certifying Agents

§205.665 specifies noncompliance procedures for certifying agents.

§205.681(b) specifies accreditation appeals procedures.

When an accredited certifying agent is found to be in noncompliance with the Act, a written notification of noncompliance shall be sent to the certifying agent. All notices (noncompliance, proposed suspension or revocation, combined notice, and notice of suspension/revocation) issued to certifying agents shall follow the Compliance and Appeals procedures specified in §205.660, 205.665, and 205.681(b). The options and progression in issuing the various notices are similar to those specified in Section G above.

I. Enforcement Actions towards Uncertified Operations

§205.100 What has to be certified.

§205.102 and§205.300 Use of the term, “Organic.”

NOP regulations require that operations or portions of operations that produce or handle agricultural products that are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s)) be certified by accredited certifying agents. Producers and handling operations that sell less than $5,000 a year in organic agricultural products are exempt from certification. They may label their products organic if they abide by the standards, but they cannot display the USDA Organic seal.

The term, “organic,” may only be used on labels and in labeling of raw or processed agricultural products, including ingredients, that have been produced and handled in accordance with the NOP regulations.

Issuance of Cease-and-Desist Letters:

Uncertified operations found in violation of the NOP Regulations are issued cease-and-desist letters that stop the violation and warn against future relapse.

Levying of Civil Penalties (§205.100) & 7 CFR §3.91

§ 205.100 (c) Any operation that:

(1) Knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than 3.91(b)(1)(xxxvii) of this title (7 CFR Subtitle A Subpart I - Adjusted Civil Monetary Penalties) per violation.

§ 3.91 (xxxvii) Civil penalty for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act of 1990, codified at 7 U.S.C. 6519(a), has a maximum of $11,000.

The NOP will levy civil penalties against uncertified operations found in willful and major violations of NOP regulations. Major violations include, but are not limited to, selling conventional products as organic, selling, labeling, and representing products as organic without certification while not exempt or excluded, falsely claiming to be certified, and using USDA seal in websites and advertisements.

Approval

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Policy and Procedure for Follow-up Monitoring of Compliance with National Organic Program Enforcement Actions

Purpose

This document establishes the National Organic Program's policy and procedure for conducting follow-up monitoring of enforcement actions.

Background

The National Organic Program (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 USDA standards. It enforces organic production, handling, and labeling standards.

In carrying out its mission, the NOP and its accredited certifying agents (ACAs) 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.

Types of Enforcement Actions

NOP enforcement actions include the following:

- Notice of Noncompliance
- Notice of Denial
- Notice of Proposed Suspension or Revocation
- Notice of Suspension or Revocation
- Consent Decree or Settlement Agreement
- Cease-and-desist Letter (only sent by the USDA NOP to uncertified operations)
- Civil Penalty

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:

- Notice of Suspension or Revocation
- Consent Decree or Settlement Agreement
- Cease-and-desist Letter

OFPA Enforcement Roles and Responsibilities

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

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 program 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.

Accredited Certifying Agents Roles and Responsibilities

During certification activities and complaint investigation, ACAs 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:

1. Entities do not appeal – ACAs issue notices of suspension or revocation.
2. Entities appeal to the USDA - The NOP implements final actions based on appeal decisions.

Policy and Procedure

Policy

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'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.

Guidelines for ACAs

1. Section 205.501(a)(15) requires the ACAs to submit a copy of:
   (i) Any notice of denial certification issued pursuant to Section 205.405, notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation sent pursuant to Section205.662 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. ACAs should submit relevant documents, simultaneous to their issuance, to NOPACAAdverseActions@ams.usda.gov.

Approval

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National Organic Program
Adverse Action Appeal Process - Certified Operation or Applicant for Certification

Purpose
This document details the procedures for determining the disposition of an appeal filed by a National Organic Program (NOP) certified operation or applicant for certification, which disputes an adverse decision of an accredited certifying agent. This document also outlines the factors which are weighed during consideration of the appeal. The NOP regulations are available online in the Electronic Code of Federal Regulations.

Scope
These procedures apply to internal operations of the Agricultural Marketing Service (AMS) Compliance and Analysis office personnel to whom the NOP has delegated responsibilities for the administration of this part of the Rule.

Standards of Reference
§ 205.681 Appeals. (a) Certification appeals. An applicant for certification may appeal a certifying agent's notice of denial of certification, and a certified operation may appeal a certifying agent's notification of proposed suspension or revocation of certification to the Administrator, Except, That, when the applicant or certified operation is subject to an approved State organic program the appeal must be made to the State organic program which will carry out the appeal pursuant to the State organic program's appeal procedures approved by the Secretary.

(1) If the Administrator or State organic program sustains an applicant's or certified operation's appeal of a certifying agent's decision, the applicant will be issued organic certification, or a certified operation will continue its certification, as applicable to the operation. The act of sustaining the appeal shall not be an adverse action subject to appeal by the affected certifying agent.

(2) If the Administrator or State organic program denies an appeal, a formal administrative proceeding will be initiated to deny, suspend, or revoke the certification. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Uniform Rules of Practice or the State organic program's rules of procedure.

Policy
NOP certified operations or applicants for NOP certification may appeal an adverse action initiated by an accredited certifying agent that has been proposed to suspend, revoke or deny the organic certification of their operation. Filing an appeal has the effect of staying the proposed adverse action until a decision has been rendered and certification status remains unchanged throughout the proceedings. The appeal is reviewed by persons not involved with the decision being appealed.

The appeal goes through an initial procedural review to determine whether the appellant has properly filed the appeal in terms of timeliness and has also submitted the required documentation. The initial

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procedural review also will determine whether the accredited certifying agent followed proper noncompliance procedures. An appellant who does not meet the filing requirements under the NOP regulations fails to preserve its appeal rights and may have its case dismissed.

After the initial appeal is filed and has been acknowledged, the NOP Appeals Team may request in its acknowledgement letter that the appellant provide a copy of the appellant's applicable record under the NOP regulations and all documents related to the appeal. In consideration of the proposed adverse action, the record is reviewed for evidence of willful violations. An appellant may be subject to additional proposed adverse actions, separate from the appeal proceeding, if other noncompliances are discovered during the course of the appeal review or investigation. Alternatively, any additional noncompliances revealed during appeal proceedings may be introduced as evidence to support the course of action as decided by the AMS Administrator.

The AMS Administrator independently reviews the appeal and comments from the Agency's Compliance and Analysis Office, NOP Deputy Administrator, and Office of the General Counsel (OGC). In rendering a decision, the AMS Administrator has the discretion to change the scope of action, reducing or expanding the terms of a suspension or revocation as applicable to the appellant's operation. In addition, the Administrator may sustain an appeal, but still may seek a punitive penalty. The AMS Administrator may not prescribe the specific penalty, but determine whether the allegations warrant a sanction that would be detailed through formal complaint or settlement agreement process.

An appeal that has been denied by the AMS Administrator may be prepared for formal administrative Complaint by persons assigned by the NOP Compliance and Enforcement Branch in consultation with OGC.

Certified operators or applicants for certification that reside entirely in a state where there is an approved SOP will file appeals with the SOP. Where the appeal decision involves operations that are multijurisdictional, the appeal should be sent to the NOP Appeals Team for review.

Procedural Review

Procedure to address appeals by certified operations or applications for certification

1. The NOP Appeals Team assigns an appeal number to the request for an appeal.

2. The appeal is subject to a Procedural Review by a Compliance Officer(s) designated on the NOP Appeals Team.

   Procedural Review Part I: Appellant

   (A) Is the appellant subject to the Act and is the appeal in response to an adverse action proposed by an accredited certifying agent or the NOP Deputy Administrator?
   (B) Is the written appeal filed within 30 days of receipt of the notice of noncompliance/proposed adverse action, or within 30 days of receipt of the notification of rejection of mediation?

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(C) Does the appeal contain a copy of the proposed adverse action letter?
(D) Does the appeal state the appellant's reason(s) for believing the proposed adverse action is not proper or was not made in accordance with the applicable NOP regulations, policies or procedures?
(E) Was the appeal sent using a delivery service which provides dated return receipts?

If the appeal was not filed in accordance with the procedural guidelines, the appeal may be **dismissed** at this time. If the appeal has been filed incorrectly, the appellant has the opportunity to cure the procedural deficiencies in the appeal if the time to file an appeal has not been exhausted. When a request for an appeal does not meet the procedural requirements under the NOP regulations, the NOP Appeals Team will issue a dismissal letter to the appellant stating the reasons for the dismissal. The accredited certifying agent or NOP is also informed of the dismissal in writing. The appellant does not have further avenues of appeal once an appeal has been dismissed for procedural deficiencies.

Procedural Review Part II: Notification of Proposed Adverse Action

(F) Has the certifying agent followed noncompliance procedures according to the NOP regulations? See § 205.662 and § 205.405.

(i) If a Notice of Proposed Suspension or a Notice of Proposed Revocation has been issued: First, was a Notice of Noncompliance issued and does the Notice of Noncompliance include the following information: (1) A description of each noncompliance; (2) The facts upon which the notification of noncompliance is based; and, (3) The date by which the certifying agent must rebut or correct each noncompliance and submit supporting documentation of each correction when correction is possible. See § 205.662(a). Second, does the Notice of Proposed Suspension or Notice of Proposed Revocation include the following information: (1) The reasons for the proposed suspension or revocation; (2) The proposed effective date of the suspension or revocation; (3) The impact of a suspension or revocation on future eligibility for accreditation; and, (4) The right to file an appeal pursuant to § 205.681. See § 205.662(c). When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or proposed revocation of certification may be combined in one notification.

(ii) If a Notice of Denial of Certification has been issued: was a Notice of Noncompliance issued and does the Notice of Noncompliance include the following: 1) A description of each noncompliance; (2) The facts upon which the notification of noncompliance is based; and (3) The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible. Second, was a Notice of Denial issued and does the Notice of Denial include the following: the reason(s) for denial and the applicant's right to: (1) Reapply for certification pursuant to §§205.401 and 205.405(e); (2) Request mediation pursuant to §205.663 or, if applicable, pursuant to a State organic program; or (3) File an appeal of the denial of certification pursuant to §205.681 or, if

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applicable, pursuant to a State organic program. When correction of a noncompliance is not possible, a notification of noncompliance and a notification of denial of certification may be combined in one notification. See § 205.405.

3. If the proposed adverse action does not comply with the procedural requirements of the NOP regulations, the appeal may be **sustained** for this reason. A copy of the decision is sent to the appellant, the certifying agent, and NOP providing information about the appellant's certification status.

4. If the appeal is procedurally compliant with the NOP regulations, as determined by the Procedural Review, the NOP Appeals Team will send an acknowledgement letter to the appellant via a method that provides dated return receipts. At this time, the appellant may be requested to provide evidence in support of the arguments in its appeal.

Substantive Review

5. Once the appeal has been accepted for review based on procedural compliance, the AMS Administrator will review the appeal and make a determination based on the substantive evidence provided by the appellant.

   (A) Factors for consideration:
   - (i) Is the noncompliance(s) substantiated by the preponderance of the evidence?
   - (ii) Are all violations listed in the proposed action appeal?
   - (iii) Are there violations which were omitted from the proposed action, but subject to inclusion in the appeal?
   - (iv) Is there evidence that the violation(s) was committed knowingly or willfully and subject to civil penalty?
   - (v) Has precedent been set in a similar situation?

6. Evidence is analyzed and organized into findings of fact based on the noncompliance(s).

7. The findings of fact substantiate the conclusions which underlie the decision to sustain or deny the appeal.

   <u>Appeal Decision</u>

   (A) The following factors are considered in the determining the disposition of the appeal:
   - (i) If not all violations are appealed, can the accredited certifying agent or NOP's action be sustained?
   - (ii) Will all, or selected violations provide sufficient evidence for litigation?
   - (iii) Will additional violations, not cited in the agent's proposed adverse action, be introduced and substantiated for litigation?
   - (iv) Is the proposed sanction, revocation or suspension of certification, or denial of certification suitable giving the violation(s)?

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(B) An appeal may be **sustained** when the preponderance of evidence does not substantiate the accredited certifying agent or the NOP's action or there is insufficient evidence for litigation; the accredited certifying agent or the NOP incorrectly interpreted or applied the regulations; and/or the accredited certifying agent or NOP did not follow the proper adverse action procedures.

(C) An appeal may be **denied** when the preponderance of evidence demonstrates noncompliance with the regulations and there is sufficient evidence for litigation. In denying the appeal, the Administrator may elect to reduce or extend the scope of the proposed adverse action, and indicate whether there are grounds to pursue civil or criminal penalties. The regulations, specifically § 205.100(c)(2), provide that any official, or an accredited certifying agent shall be subject to the provisions of section 101, Title 18, United States Code, Crimes and Criminal Procedure, Fraud and False Statement.

(i) If any appellant appeals some, but not all of the violations as listed in the adverse action letter, the appeal may be denied if there is sufficient evidence to support the noncompliances which have not been addressed.

(ii) If the appellant successfully argues that other portions of the operation were in compliance and the act was not intentional the Administrator may reduce the scope of a suspension.

(iii) If the Administrator believes the scope was too limited the Administrator may seek a broader scope when filing the complaint.

(iv) If the Administrator determines that the proposed adverse action is too severe, the Administrator may reduce the proposed adverse action in the appeal decision by reducing either the severity or length of the sanction.

(v) If the Administrator determines the proposed adverse action is not severe enough, the Administrator may deny the appeal and seek further sanctions through a formal administrative Complaint filed by OGC.

8. When an accredited certifying agent is responsible for procedural errors in relation to the adverse action that is the basis for the appeal, the appeal may be **dismissed**. As a result of this action, the Agency may direct an accredited certifying agent agent to rescind the adverse action, reinstate the proposed adverse action, and provide the operation with a new opportunity to file an appeal; or continue certification of the operation on the basis of the procedural error and advise the accredited certifying agent that it may issue a new proposed adverse action notification when appropriate.

9. A clearance document is prepared for the appeal draft decision noting the precedent which the decision will establish. The appeal draft decision, comprised of the findings of fact, conclusion, decision, and exhibits, is circulated for review, comment and signature to the Director, Compliance, Safety and Security Division; NOP Deputy Administrator, OGC; and the AMS Administrator.

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10. Following the receipt of comments from the Compliance and Analysis office, NOP, and OGC, the AMS Administrator independently reviews the appeal and decides whether to sustain or deny the appeal

11. When the appeal decision has passed all clearance stages, the decision is finalized. The NOP Appeals Team sends a copy of the decision and transmittal letter to the appellant, accredited certifying agent, and NOP, sent by a delivery service which provides dated return receipts.

12. An appeal which has been denied is referred to the NOP and OGC to file a formal administrative Complaint to formally deny, suspend or revoke.

13. An appeal regarding denial of certification, when sustained, is transmitted to the certifying agent with directions to issue certification to the operation.

14. The records of each appeal, the final decision, and any follow-up action taken are maintained by the Compliance and Analysis office in accordance with published retention schedules.

15. Appeal decisions that sustain the appeal terminate the adverse action proceedings and are final actions of the Agency and subject to the Freedom of Information Act.

16. Appeal files are part of the Agency's Privacy Act system of records and are maintained and released in accordance with these regulations.

*The procedures outlined in this document are subject to change.

Document Control and Retention

All documents related to this process are retained in AMS Compliance for 10 years.
Appeal letters and accompanying documentation
Acknowledgement of receipt of appeal
Procedural review
Transmittal letters
Decision document/exhibits
Clearance document
Related correspondence
Litigation referral packet
Formal complaint

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National Organic Program
Adverse Action Appeal Process - Accreditation Appeals

Purpose
This document details the procedures for determining the disposition of an appeal filed by an accredited certifying agent or applicant for accreditation, which disputes an adverse decision made by the Deputy Administrator of the National Organic Program (NOP) within the United States Department of Agriculture (USDA). This document also outlines the factors which are weighed during the consideration of an appeal.

Scope
These procedures apply to internal operations of the Agricultural Marketing Service (AMS) Compliance and Analysis office personnel to whom the NOP has delegated responsibilities for the administration of this part of the Rule.

Standards of Reference
§205.681 Appeals. (b) Accreditation appeals. An applicant for accreditation and an accredited certifying agent may appeal the [NOP Deputy Administrator's] denial of accreditation or proposed suspension or revocation of accreditation to the [AMS] Administrator. (1) If the [AMS] Administrator sustains an appeal, an applicant will be issued accreditation, or a certifying agent will continue its accreditation, as applicable to the operation.

(2) If the [AMS] Administrator denies an appeal, a formal administrative proceeding to deny, suspend, or revoke the accreditation will be initiated. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Uniform Rules of Practice, 7 CFR Part 1, Subpart H.

Policy
Accredited certifying agents or applicants for accreditation under the NOP may appeal an adverse action of the NOP Deputy Administrator that has proposed to suspend, revoke or deny the accreditation of their operation. Filing an appeal has the effect of staying the proposed adverse action until a decision has been rendered and accreditation status remains unchanged throughout the proceedings if the appellant is already accredited. The appeal is reviewed by persons not involved with the decision being appealed.

The appeal goes through an initial procedural review to determine whether the appellant has properly filed the appeal in terms of timeliness and has also submitted the required documentation. The initial procedural review also will determine whether the noncompliance proceeding initiated by the NOP Deputy Administrator adhered to the regulations. An appellant who does not meet the filing requirements under the NOP regulations fails to preserve its appeal rights and may have its case dismissed.

Approval:
C&A
6/3/2010

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After the initial appeal is filed and has been acknowledged, the NOP Appeals Team will request in its acknowledgement letter that the appellant provide a copy of the appellant's applicable record under the NOP regulations and all documents related to the appeal. In consideration of the proposed adverse action, the record is reviewed for evidence of willful violations. An appellant may be subject to additional proposed adverse actions, separate from the appeal proceeding, if other noncompliances are discovered during the course of the appeal review or investigation. Alternatively, any additional noncompliances revealed during appeal proceedings may be introduced as evidence to support the course of action as decided by the AMS Administrator.

The AMS Administrator independently reviews the appeal and comments from the Agency's Compliance and Analysis office and Office of General Counsel (OGC). Final clearance is limited to OGC since the regulations specify that the appeal will be reviewed by persons not involved with the decision being appealed. In rendering a decision, the AMS Administrator has the discretion to change the scope of action, reducing or expanding the terms of suspension or revocation as applicable.

It is important to clarify that the AMS Administrator's role in granting USDA accreditation does not preclude the AMS Administrator from ruling on accreditation appeals. Denials of accreditation are issued by the NOP Deputy Administrator since deficiencies are detected during the application review stage. Requests for accreditation are presented to the AMS Administrator for approval after successful completion of the review process. Therefore in deciding accreditation appeals the AMS Administrator maintains independence from involvement in the decision being appealed.

Procedural Review

Procedure to address appeals by certifying agents

1. The NOP Appeals Team assigns an appeal number to the request for an appeal.

2. The appeal is subject to a Procedural Review by a Compliance Officer(s) designated on the NOP Appeals Team.

   Procedural Review Part I: Appellant

   (A) Is the appellant subject to the Act and is the appeal in response to a noncompliance decision of the NOP Deputy Administrator?
   (B) Is the written appeal filed within 30 days of receipt of the notice of noncompliance/proposed adverse action?
   (C) Does the appeal contain a copy of the proposed adverse action letter?
   (D) Does the appeal state the appellant's reason(s) for believing the proposed adverse action is not proper or was not made in accordance with the applicable NOP regulations, policies or procedures?
   (E) Was the appeal sent using a delivery service which provides dated return receipts?

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If the appeal was not filed in accordance with the procedural guidelines, the appeal may be **dismissed** at this time. If the appeal has been filed incorrectly, the appellant has the opportunity to cure the procedural deficiencies in the appeal if the time to file an appeal has not been exhausted. When a request for an appeal does not meet the procedural requirements under the NOP regulations, the NOP Appeals Team will issue a dismissal letter to the appellant stating the reasons for the dismissal. The NOP is also informed of the dismissal in writing. The appellant does not have further avenues of appeal once an appeal has been dismissed for procedural deficiencies.

Procedural Review Part II: Notification of Proposed Adverse Action

(F) Has the NOP Deputy Administrator followed noncompliance procedures according to the NOP regulations? See § 205.665.

(i) If a Notification of Noncompliance has been issued: Does the Notice of Noncompliance include the following information: (1) A description of each noncompliance; (2) The facts upon which the notification of noncompliance is based; and, (3) The date by which the certifying agent must rebut or correct each noncompliance and submit supporting documentation of each correction when correction is possible. See § 205.665(a).

(ii) If a Notification of Noncompliance and Proposed Adverse Action has been issued, does the Notice of Noncompliance and Proposed Adverse Action include the following information: (1) The reasons for the proposed suspension or revocation; (2) The proposed effective date of the suspension or revocation; (3) The impact of a suspension or revocation on future eligibility for accreditation; and, (4) The right to file an appeal pursuant to § 205.681. See § 205.665(c).

(iii) If a Denial of Accreditation has been issued, does the Denial include the following information: (1) A description of each noncompliance; (2) The facts upon which the notification of noncompliance is based; and (3) The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible. When each noncompliance has been resolved, the Program Manager will send the applicant a written notification of noncompliance resolution and proceed with further processing of the application. If an applicant fails to correct the noncompliances, fails to report the corrections by the date specified in the notification of noncompliance, fails to file a rebuttal of the notification of noncompliance by the date specified, or is unsuccessful in its rebuttal, the Deputy Administrator will provide the applicant with written notification of accreditation denial. An applicant who has received written notification of accreditation denial may apply for accreditation again at any time in accordance with § 205.502, or appeal the denial of accreditation

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in accordance with § 205.681 by the date specified in the notification of accreditation denial. See § 205.507.

3. If the adverse action letter that had been issued by the NOP does not comply with the procedural requirements of the NOP regulations, the appeal may be **sustained** for this reason. A copy of the decision is sent to the appellant and the NOP providing information about the appellant's accreditation status.

4. If the appeal is procedurally compliant with the NOP regulations, as determined by the Procedural Review, the NOP Appeals Team will send an acknowledgement letter to the appellant via a method that provides dated return receipts. At this time, the appellant may be requested to provide evidence in support of the arguments in its appeal.

Substantive Review

5. Once the appeal has been accepted for review based on procedural compliance, the AMS Administrator will review the appeal and make a determination based on the substantive evidence provided by the appellant.

   (A) Factors for consideration:
   - (i) Is the noncompliance(s) substantiated by the preponderance of evidence?
   - (ii) Are all violations listed in the proposed action appealed?
   - (iii) Are there violations which were omitted from the proposed action, but subject to inclusion in an appeal decision?
   - (iv) Is there evidence that the violation(s) was committed knowingly or willfully?
   - (v) Has precedent been set in a similar situation?

6. Evidence is analyzed and organized into findings of fact based on the noncompliance(s).

7. The findings of fact substantiate the conclusions which underlie the decision to sustain or deny the appeal.

   <u>Appeal Decision</u>

   (A) The following factors are considered in the appeal decision:
   - (i) If violation(s) is not appealed, could the NOP Deputy Administrator's action be sustained?
   - (ii) Will all, or selected violations provide sufficient evidence for litigation?
   - (iii) Will additional violations, not cited in the proposed adverse action letter, be included and substantiated for litigation?
   - (iv) Is the proposed sanction, revocation or suspension of accreditation or denial of accreditation, suitable given the violation(s)?

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(B) An appeal may be **sustained** when the preponderance of evidence does not substantiate the NOP Deputy Administrator's actions or is there is insufficient evidence for litigation; the NOP incorrectly interpreted or applied the regulations; and/or the NOP Deputy Administrator did not follow the proper adverse action procedures.

(C) An appeal may be **denied** when the preponderance of evidence demonstrates noncompliance with the NOP regulations and there is sufficient evidence for litigation supporting the proposed adverse action. In denying the appeal, the Administrator may elect to reduce or extend the scope of the proposed adverse action.

(i) If an appellant appeals some, but not all of the violations as listed in the adverse action letter, the appeal may be denied if there is sufficient evidence to support the noncompliances which have not been addressed.

(ii) If the appellant successfully argues that other portion(s) of its accreditation operation was in compliance and the act was not intentional the Administrator may reduce the scope of the adverse action.

(iii) If the Administrator believes the scope was too limited the Administrator may seek a broader scope when filing the complaint.

(iv) If the Administrator determines that the proposed adverse action is too severe, the Administrator may reduce the action in the appeal decision by reducing either the severity or length of the sanction.

(v) If the Administrator determines the proposed adverse action is not severe enough, the Administrator may deny the appeal and seek further sanctions through a formal administrative Complaint filed by OGC.

8. When the Agency is responsible for procedural errors in relation to the adverse action that is the basis for the appeal, the appeal may be **dismissed**. As a result of this action the Agency may rescind the adverse action, reissue the proposed adverse action, and provide the accredited certifying agent or applicant for accreditation with a new opportunity to file an appeal, or continue accreditation of the agent on the basis of procedural error and issue a new proposed adverse action notification when appropriate.

9. A clearance document is prepared for the appeal draft decision noting the precedent which the decision will establish. The appeal draft decision, comprised of the findings of fact, discussion, conclusion, decision, and exhibits, is circulated for review, comment and signature to the Director, Compliance Safety and Security Division; OGC; and the AMS Administrator. The NOP Deputy Administrator does not review the appeal decision.

10. Following the receipt of comments from the Compliance and Analysis office and OGC, the AMS Administrator independently reviews the appeal and decides whether to sustain or deny the appeal. When the decision has passed all clearances, the decision is finalized. The NOP Appeals Team sends a copy of the decision and transmittal letter to the appellant and the NOP. The correspondence is sent by a delivery service which provides dated return receipts.

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11. An appeal which has been denied is referred to the NOP and OGC to file a formal administrative Complaint to formally suspend, revoke or deny accreditation.

12. The records of each appeal, the final decision, and any follow-up action taken are maintained by the Compliance and Analysis office in accordance with published retention schedules.

13. Appeal decisions that sustain the appeal terminate the adverse action proceedings and are final actions of the Agency and subject to the Freedom of Information Act.

14. Appeal files are part of the Agency's Privacy Act system of records and are maintained and released in accordance with these regulations.

*The procedures outlined in this document are subject to change.

Document control and Retention
All documents related to this process are retained in AMS Compliance for 10 years.
Letters of Appeal and accompanying documents
Acknowledgement of receipt of appeal
Procedural Review
Transmittal letters
Decision document and exhibits
Clearance document
Related correspondence
Litigation referral packet
Formal complaint