NOFA-NY Certified Organic, LLC

Policy Manual

NOFA-NY Certified Organic LLC
Policy Manual – Version 14

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Northeast Organic Farming Association of New York, Inc (NOFA-NY, Inc) is a non-profit, tax-exempt IRS 501 (c) 3 educational organization. NOFA-NY Certified Organic, LLC is a Limited Liability Company (LLC) engaged in third party verification activities for agricultural producers and handlers of organic products. 5

NOFA-NY Certified Organic LLC is a wholly owned subsidiary of NOFA-NY, Inc. 5

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NOFA-NY Certified Organic LLC
Policy and Procedures Manual

It is important that farmers, processors, and consumers understand the process we use to certify farms and handling operations. Many policies described in this manual are a direct requirement of the National Organic Program Regulations; others are created within the structure requirements of the regulations. Applicable Sections of the Regulations are identified in parentheses throughout this manual.

1. Organizational Structure, Authority, General Accreditation Policies, Administration

1.0. Legal Status

Northeast Organic Farming Association of New York, Inc (NOFA-NY, Inc) is a non-profit, tax-exempt IRS 501 (c) 3 educational organization. NOFA-NY Certified Organic, LLC is a Limited Liability Company (LLC) engaged in third party verification activities for agricultural producers and handlers of organic products.

NOFA-NY Certified Organic LLC is a wholly owned subsidiary of NOFA-NY, Inc.

The oversight of the LLC is performed by a Management Committee which is appointed by the Board of Directors of NOFA-NY, Inc. Executive function and oversight of the LLC agency day-to-day operations is exercised by the Associate Directors who is appointed and reports to the Management Committee. The composition of the Management Committee of the NOFA-NY Certified Organic LLC is in compliance with the Conflict-of-Interest provisions of the Federal Organic Rule.

1.1. Accreditation Status

NOFA-NY Certified Organic, LLC received accreditation from the USDA National Organic Program (NOP) as of April 29, 2002. To maintain accreditation, the agency submits an annual update report to the NOP and submits to on-site audits conducted by NOP representatives as required by Title 7 CFR. These audits testify to the agency's continued compliance with accreditation requirements.

NOFA-NY Certified Organic, LLC refrains from making false or misleading claims about its accreditation status, the USDA accreditation program for certifying agents, or the nature or qualities of products labeled as organically produced.

1.2. Authority of the Management Committee

The Management Committee, appointed by the Board of the Northeast Organic Farming Association of NY, Inc., has all powers to control and manage NOFA-NY Certified Organic, LLC, as stated in the Operating Agreement. The Management Committee provides the governance structure for NOFA-NY Certified Organic, LLC based upon NOP Regulations and recommendations from certification staff, contract reviewers and inspectors.

1.3. General Accreditation Policies

1.3.0. Confidentiality Policy (§205.501(a)(10)

NOFA-NY Certified Organic, LLC safeguards the confidentiality of any business-related information concerning any client, products, or suppliers obtained during the course of certification. Members of the Management Committee, staff, inspectors, contract reviewers, and any other personnel shall maintain strict confidentiality with respect to the clients certified by NOFA-NY Certified Organic LLC. An annual declaration adhering to this policy will be required of all Management Committee members, staff, inspectors, and contract reviewers.

NOFA-NY Certified Organic, LLC does not disclose any proprietary information to third parties without the client's written consent prior to release, except to the authorized representatives of the Secretary, the applicable State Organic Program's Governing State Official, or other authorized representatives of accreditation agencies where necessary to implement the NOP, the State Organic Program, or the NOFA-NY Certified Organic, LLC certification program. NOFA-NY Certified Organic, LLC may disclose proprietary information as required by other laws of the United States or other countries in which it performs certification activities, State law or other laws of local governments.

NOFA-NY also makes public upon request all certificates, Client Profiles, and any results of laboratory analyses for residues of pesticide and other prohibited substances conducted during the current and 3 preceding calendar years, unless the testing is part of an on-going compliance investigation. Public information about certified operations is made available by the National Organic Program.

1.3.1. Conflict of Interest Policy (§205.501(a) (11)

Conflicts of Interest shall be prevented by:

- Not certifying a production or handling operation if the certifying agent, or a responsibly connected party of such certifying agent has, or has held, a commercial interest in the production or handling operation, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification.
- Excluding any person, including contractors, with conflicts of interest from work, discussions, and decisions in all stages of the certification process and the monitoring of certified production or handling operations for all entities in which such person has, or has held, a commercial interest, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification.
- Not permitting any employee, inspector, contractor, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any operation inspected.
- Not giving advice or providing consultancy services, to certification applicants or certified operations, for overcoming identified barriers to certification.
- Requiring Management Committee members and 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 to complete an annual conflict of interest disclosure report.
- Ensuring that the decision to certify an operation is made by a person different from those who conducted the initial review of documents and on-site inspection.
- Reconsider a certified operation's application for certification and, if necessary, perform a new onsite inspection when it is determined, within 12 months of certifying the operation, that any person participating in the certification process and covered under §205.501 (a)(11)(ii) has, or had, a conflict of interest involving the applicant. All costs associated with a reconsideration of application, including on-site inspection costs, shall be borne by the certifying agent.
- Referring a certified operation to a different accredited certifying agent for re-certification and reimburse the operation for the cost of the re-certification when it is determined that any person

covered under §205.501 (a)(11)(i) at the time of certification of the applicant had a conflict of interest involving the applicant.

1.3.2. Non-discrimination Policy

Any person (farm or handler) marketing organic product may apply for organic certification. NOFA-NY Certified Organic LLC shall not exclude from participation in or deny the benefits of the National Organic Program to any person due to discrimination because of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, marital or family status.

1.3.3. Reciprocity with other certifying agents/agencies

Certification decisions made by other USDA accredited certification programs shall be accepted as required by the National Organic Program Regulations.

A producer may substitute a plan prepared to meet the requirements of another Federal, state, or local government regulatory program, or another organic certification program, for the organic system plan provided that the submitted plan meets all requirements of the NOP regulations.

1.3.4. Acceptance of Applications

NOFA-NY Certified Organic LLC will accept all production or handling applications that fall within its areas of accreditation and certify all qualified applicants to the extent of its administrative capacity to do so without regard to size or membership in any association or group.

1.3.5. Submission of Information and Fees to USDA/NOP

The following information will be prepared and submitted to the NOP by the Associate Directors or by staff delegated by the Associate Directors.

- The annual update/report to the USDA/NOP on or before the anniversary of the date accreditation was granted.
- Application for accreditation renewal to the USDA/NOP at least six months prior to the fifth anniversary of the date accreditation was granted and every five years thereafter.
- NOFA-NY Certified Organic LLC may request amendment to the scope of its accreditation at any time. The application for amendment will be sent to the USDA/NOP and will contain information applicable to the requested change in accreditation, a complete and accurate update of the information submitted per NOP 205.503-205.504, and the applicable fees.
- Timely updates throughout the year to the Organic Integrity Database. Producer information provided will include at minimum the name, address, and telephone number of each operation granted certification during the preceding year.
- All fees and charges for certification activities, as well as refund policies, will be filed with the USDA/NOP. Changes will be filed prior to implementation.
- Fees for accreditation will be paid and submitted to USDA/NOP.

1.3.6. Cessation of Certification Activities

If NOFA-NY Certified Organic LLC is dissolved or its accreditation to the USDA/NOP is suspended/revoked, all certification activities in each applicable area of accreditation will cease. All records concerning the applicable certification activities will be transferred to the Secretary.

1.3.7. Other

NOFA-NY Certified Organic LLC will hold the Secretary harmless for any failure on the part of NOFA-NY Certified Organic LLC to carry out the provisions of the NOP regulations.

NOFA-NY Certified Organic LLC will furnish reasonable security, in an amount and according to such terms as the Administrator of the AMS may by regulation prescribe, for the purpose of protecting the rights of certified production and handling operations.

1.4. Program Administration

1.4.0. The Management Committee

The Management Committee has all powers to control and manage NOFA-NY Certified Organic, LLC as stated in the Operating Agreement between the Northeast Organic Farming Association of NY, Inc. and NOFA-NY Certified Organic LLC, with the exception of granting certification.

The Management Committee provides governance for NOFA-NY Certified Organic LLC, based upon the NOP Regulations and recommendations from staff, inspectors, and contract reviewers. The Management Committee shall be comprised of not less than three or more than 10 members. The Management Committee shall select from its membership a Chair or Co-Chairs. Management Committee members will be appointed for a three-year term. They may serve consecutive terms. Vacancies will be filled by appointment of the Northeast Organic Farming Association of NY, Inc. Board of Directors. Successive terms are permitted. Producers or handlers certified by NOFA-NY Certified Organic LLC are not eligible to serve on the Management Committee.

Duties include the following, and these duties may be delegated to qualified staff.

- Oversee administration of NOFA-NY Certified Organic LLC.
- Ensure records, policies, and procedures meet the requirements of applicable laws & regulations and third party accreditation.
- Establish committees as needed, including executive, personnel, finance, etc.
- Primary responsibility for use of LLC funds including approving an annual budget and fund allocation.
- Establish fees for certification.
- Conduct the hiring, dismissal, supervision, and annual performance review of the Associate Directors.
- Other duties as deemed necessary for the proper governance of NOFA-NY Certified Organic LLC per Operating Agreement.

Members of the Management Committee should be knowledgeable of the certification process. Members of the Management Committee should also be experienced in the issues concerned with operation of a business venture, such as finance and personnel experience.

1.4.1. Certification Staff

The Associate Director of Certification, Associate Director of Quality & Accreditation, and other program staff are responsible for conducting the day-to-day work of NOFA-NY Certified Organic, LLC.

Inspectors, who may be either employees or independent contractors, conduct the inspections of farms and handling operations and submit inspection reports to the certification office.

Contract Reviewers may be utilized in addition to office staff. Contract Reviewers may be certified producers, members of the general public, and/or inspectors, provided the conflict-of-interest requirements and experience and qualifications are met.

Staff and Contract Reviewers are responsible for evaluating applications and inspection reports for compliance with the NOP Regulations and deciding which operations qualify for certification. Reviewers are knowledgeable in the organic production type of the application that they are evaluating.

2. Organic Certification

2.0. Organic Certification Regulations, Certification Agency Policy and Guidance

The USDA National Organic Program Regulations are the basis for certification of organic production. Operations seeking initial or continuing certification are required to obtain a copy of the NOP Regulations. The NOP Regulations are sent to operations along with the NOFA-NY Certified Organic LLC Policy Manual, which is included in all application packets. The NOP Regulations, NOFA-NY Policy Manual will be available on our website www.nofany.org.

Changes to the NOP Regulations will be sent to certified operations as they occur and changes to the NOFA-NY Certified Organic LLC Policy and Procedures Manuals will be sent as they occur or annually as applicable. The changes shall be included in application packets and subsequent versions of the manuals.

2.1. Certification Categories

NOFA-NY Certified Organic LLC provides organic certification in the following scopes recognized by the National Organic Program:

- Crops [includes greenhouse, maple, mushroom, sprout production]
- Livestock [includes dairy (cow, goat, sheep), swine, poultry]
- Handling
- Wild Crops

NOFA-NY Certified Organic LLC also provides Grass Fed certification for already certified organic operations.

2.2. International Trade Agreements

Evaluation of compliance with the terms of these agreements is included in the annual certification review process for each NOP certification category. We offer certified operations equivalence verification for export to and import from Canada, European Union, Japan, Korea, Switzerland, Taiwan, and the United Kingdom.

- NOFA-NY Certified Organic LLC will notify its producers of any changes to the compliance requirements for each applicable export/import arrangement as they occur or annually as applicable. Producers in need of an Equivalency Arrangement complete the Imports & Exports OSP to assist in abiding to critical variances, exclusions, product origin, and labeling requirements for specific foreign markets applicable to their operation.
- NOFA-NY Certified Organic LLC will ensure compliance with export/import arrangements through recordkeeping and inspections including residue testing.
- Appropriately trained and qualified staff will act as the authorized person in the issuance of the export certification and attest to its authenticity by affixing his/her signature to certificate. The designated person(s) is responsible for all aspects of the issuance of the export certificate, including ensuring security of blank export certificates.

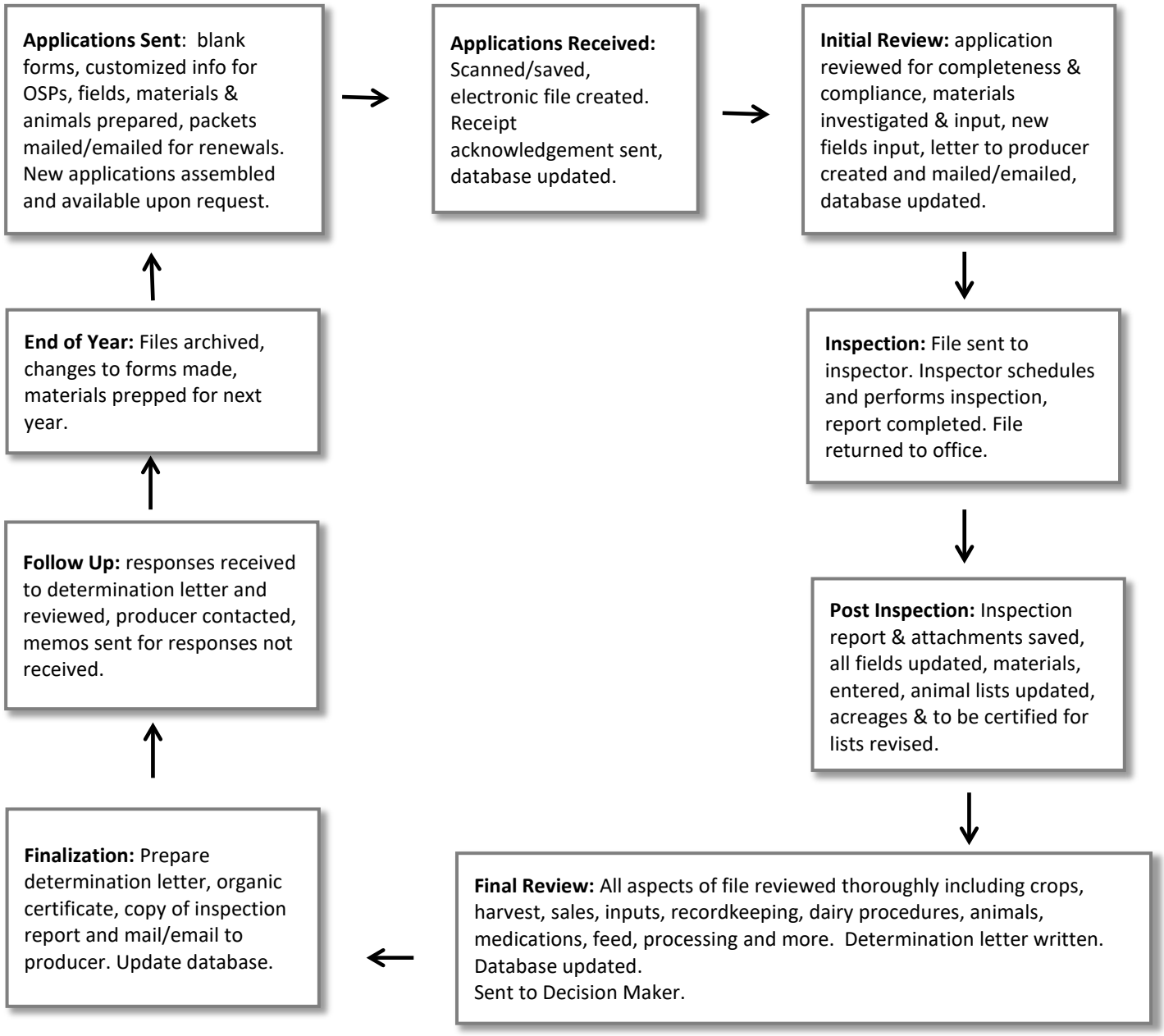
Detailed information on the various Equivalency Arrangements and requirements are detailed on the USDA NOP webpage at https://www.ams.usda.gov/services/organic-certification/international-trade. Staff are able to assist to go over detailed requirements if this is an active part of your business. Prior to shipping product to international markets be sure your product is able to comply with any applicable restrictions.

2.3. Certification Annual Process

Organic Certification is an annual process which requires:

- Submission of a complete application (Organic System Plan) and/or annual update
- Payment of fees
- Initial Renewal Review/evaluation of application or changes
- Inspection of operation within reasonable time (not to exceed 6 months for initial certification or 12 months for continuing certification) from receipt of a complete application
- Final Review/evaluation of application and inspection report
- Certification Decision

STEP BY STEP PROCEDURES FLOWCHART



2.3.0. Obtain Current Application Packet

Application packets can be obtained through the Certification Office or online at www.nofany.org for both initial and continuing certification. Operations may also participate in filing through the Clover Portal platform. This platform allows for direct interface with the agency's database to streamline the document handling for filing. To use this option and obtain login credentials please contact the office for more information and directions. Operations seeking initial certification must obtain the current certification application packet which includes the current version of the NOP Regulations.

Certified operations are required to update their Organic System Plan (OSP) annually or as changes occur. Application packets for continuing certification will be provided by the Certification Office annually.

2.3.1. Attend Workshop

NOFA-NY offers a host of workshops and office hours style forums throughout the year. Producers applying for initial certification are encouraged to attend workshops when they are available. The workshops provide information regarding specific certification requirements, and an opportunity for applicants to ask questions about the application and overall process. They help producers understand the necessary information and reduce the time spent completing the paperwork.

2.3.2. Submit Complete Organic System Plan with Payment (§205.401(c))

Application packets include the paperwork which will comprise the operation's Organic System Plan. An incomplete application cannot be evaluated, and a memo will be sent to the operator with a due date for submission of the missing information. Payment must be submitted at the time of application. Applications and supporting documentation must be in English. If in another language and translation is required, translation fees will be billed to producer.

Note that a plan prepared to meet the requirements of another Federal, State or local government regulatory program may be substituted for the NOFA-NY, LLC Organic System Plan document(s) if it includes all necessary information and meets the requirements of the National Organic Standards.

Operators seeking initial certification with NOFA-NY Certified Organic LLC must include the name(s) of any organic certifying agent(s) to which application has previously been made, the year(s) of such application, and the outcome of the application(s) submission. A copy of any notification of noncompliance or denial of certification issued to the operation, and a description of the actions taken by the operator to correct the noncompliances identified in the notification of noncompliance, and evidence of such correction must be submitted.

Once certified, an operation's certification continues in effect until surrendered by the operation, or until suspended or revoked by NOFA-NY, the USDA Administrator, or other governing official. However, to maintain certification, an operation must update their certification annually.

Based upon an Initial Review of the application, other information necessary to determine compliance with the NOP Regulations may be requested, with a due date for submission of the information.

Continuing Certification. Annual updates are to be submitted electronically or postmarked by the anniversary date of the operation. Anniversary dates are listed on certificates and are typically January 15th of February 28th. Operations continuing certification must include any deviations from and/or changes made to the previous year's OSP. If the annual update information or notification of surrender of certification is not received by the established due date for continuing certification, noncompliance procedures will be initiated by the certification office.

OSP Annual Updates submitted electronically or postmarked after the date specified will be subject to Noncompliance Notification Procedures.

The continuing certification process typically takes on average eight months from receipt of renewal application with payment to receipt of continued certification decision.

2.3.2.0. Operations switching to NOFA-NY from another certification agency

The Producer must provide a current certificate and determination letter. If a response is required on determination, that response should also be provided.

NOFA-NY will obtain from current certifier on official certifier paperwork or letterhead the following:

- Listing of field IDs and acreage certified
- Listing of animals certified
- Letter of good standing
- Any outstanding non-compliances

2.3.3. Application/OSP Initial Review

Once an application for initial or continuing certification is received by the Certification Office with payment of the applicable fees and is determined to be complete, an Initial Renewal Review is conducted to evaluate any reported changes and whether the operation appears to be in compliance with the NOP Regulations, and International Equivalency requirements, if applicable. If additional information is needed to make this determination, a letter is sent to the operation requesting information to be submitted by a specific due date. If the requested information is not received by the due date, a No Response fee may be assessed, and will be subject to Noncompliance Notification Procedures.

If the OSP appears to be compliant or that the operation has the capacity to comply, an Initial Review Letter is sent to the operation detailing any additional information that must be available at the time of inspection. The file is forwarded to the inspector.

If the OSP is not compliant, or does not appear to be able to comply, additional information may be requested or Noncompliance Notification Procedures will be initiated.

2.3.4. Authorized Representative Signature

A signature identifies the signer and signifies that the signer understood and intended to carry out whatever was stipulated in the document that was signed.

A signature authenticates a document by linking the signer with the signed document. A signature may also express the signer's approval or authorization of the signed document and what it contains, and his or her intent that it has legal effect. The signature provides evidence that the signer indeed did something and saw and approved a particular document at the time of signing.

A signature is often used to protect against fraud, impersonation, or intrusion.

Hard copy or electronic signatures will be accepted in all places where signatures are required. Electronic signature may consist of actual signature, digital ID, or typed signature if intent to sign/accept agreement is clear by the individual signing. Intent may be established by email, checkbox, clause in applicant affirmation, or other affirmative action, including the signature itself.

2.3.5. Inspection

The inspector schedules the on-site inspection for initial certification, annual inspections for continuing certification, and any additional inspections that may be necessary. A hybrid inspection (part on-site, part virtual) may be performed only as indicated by internal procedures. An authorized representative who is knowledgeable about the operation must be present for the inspection and the inspection must be conducted when all land, facilities and activities that demonstrate compliance can be observed, except that this requirement does not apply to unannounced inspections. For new operations, the initial inspection visit must be performed within six months following receipt of a complete application that appears to comply or may be able to comply with the NOP requirements. For already certified operations, inspections for continuing certification must be performed within the calendar year.

Producers and inspectors must ensure that there is ample time for the inspection. The duration of an inspection varies by operation and from inspection to inspection. The inspector needs to view all documents that form the producer's audit trail, and the producer must have complete input, harvest, production and sales records for no less than five years prior available for inspection, including all receipts for inputs, contracted services, and equipment rental.

Inspectors and operators should be flexible when scheduling inspection. Inspectors should be prepared with at least 2-3 options for date and/or time, and operator should accommodate one of those options. Failure to complete an annual inspection or to cooperate with the inspector to schedule the inspection in a reasonable timeframe will initiate noncompliance notification procedures.

2.3.6. Final Review and Certification Decision

Once the completed inspection report has been submitted, a final review of the OSP and inspection report is conducted to evaluate compliance with NOP Regulations, and a certification decision is made. The Certification Determination Notice is sent to the operation, indicating whether certification is approved, pending, or denied, and will include the following information, as applicable:

- Areas of Noncompliance if applicable
- Minor Issues (Conditions for Continuing Certification/Conditions for Certification)
- Missing Documentation
- Additional information needed with next annual update application
- Notes/Reminders

2.3.7. The Organic Certificate

When organic certification is approved, an Organic Certificate is issued. An updated organic certificate will be issued annually, after the annual update for the certified operation has been received, inspected, evaluated and approved for continued certification. A certificate may also be updated when a new scope or product(s) are approved.

The Organic Certificate is issued only in English, and contains the following information, as required by §205.404(b)(1-4) of the NOP Regulations and NOP Instruction 2603:

- Certified operation's legal name and address, including a physical address if the mailing or legal address is not the physical location of the operation.
- Name, address, internet address and phone number of NOFA-NY Certified Organic LLC.
- Effective date of organic certification (the date the operation was initially certified by NOFA-NY to the NOP regulations) Note: certifying after surrender, suspension, or revocations will result in a new effective date.
- Anniversary Date (the date when certified operation is required to submit their next annual update).
- Category of certification (crops, livestock, handling, wild crops).
- Certified organic products covered under the organic certification.
- Label classification for processed organic products – 100%, Organic, and Made with Organic (specified ingredients or food groups) and Livestock Feed (Organic or 100% Organic).
- The statement – "Certified to the USDA organic regulations, 7 CFR Part 205."
- The statement – "once certified, a production or handling operation's organic certification continues in effect until surrendered, suspended or revoked".

If any of the information specified on the certificate of a certified operation changes, the certifying agent must determine that the changes comply with the Act and the Regulations and issue an updated certificate of organic operation pursuant to 205.404 (b).

The certificate does not expire and is valid until surrendered, suspended, or revoked.

The certificate is a legal document that must not be altered, redacted, or revised in any way. This would result in initiation of Noncompliance Notification procedures.

Certificate must identify only one "person" (typically a farm or business as defined in 7 CFR § 205.2) this "person" must be certified organic. Each certified organic operation must have its own organic certificate. Certification and certificates issued to certified operations are not transferrable to new owners in cases of mergers, acquisitions, or other transfers of ownership.

Entity legal name examples

- Sole Proprietorship
- Partnership – General or limited
- Limited Liability Company (LLC)
- Corporation

New York State requires business to be conducted using a true legal name. As a result, those entities seeking to use a name other than their true legal name must file for a DBA.

A single person or single legal entity-business may elect to include all certified locations/facilities that are a part of their operation under one certification. If products vary among locations, an addendum will be issued listing locations and products specific to that location.

If electing to have a single certificate in a person's name or a business name that covers multiple locations and a noncompliance with any location progresses to suspension, the entire certification (all locations) could be suspended. To avoid this situation separate business locations may elect to be handled as separate certifications. If an applicant elects to have multiple locations on a certificate, please contact NOFA-NY so we may assist in providing additional location certification fees and inspection quotes.

2.3.8. International Trade Documents

The certification office will issue affirmations/affidavits/export certificates as applicable to verify existing international equivalency agreements. Affirmations/affidavits/export certificates will be issued only when requested by a certified operation and production practices and labels have been determined to be compliant with the requirements of the destination country.

2.3.9. Term of Certification

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 or the USDA AMS Administrator (§205.404(c)).

If a certified operation does not intend to continue certification with NOFA-NY Certified Organic, LLC, they must submit written notification and voluntarily surrender their certificate to the certification office prior to annual due date. Applications not submitted or surrendered by annual due date will be issued a noncompliance and additional fees may be incurred. Charges will continue to be incurred until an application or a written notice of surrender is received. This also applies to operations switching certifiers.

2.3.10. Changes and Additions to Existing Certification (Extension of Certification)

If an operation intends to add another category of certification, add fields, products, facilities, etc., complete information regarding the new production must be submitted to the certification office and approval must be granted prior to implementation or release of new production. The certification office will evaluate the documentation to verify compliance and determine whether an additional on-site inspection is necessary. If

the new product(s) or production is similar to those already certified, an additional on-site inspection may not be required.

If certification is approved, the Organic Certificate will be updated to include the additional production.

We recommend that all potential products and areas of production be included with the initial or continuing certification paperwork. Additional fees will be assessed for changes to certification that take place outside the annual review and evaluation process.

2.3.11. Non-organic Inputs and Material Reviews

Certified operations and those requesting initial certification must use organic agricultural inputs and ingredients, or those identified in the National List as allowed. The National List is comprised of Sections 205.601 through 205.606 of the NOP Regulations and specifies the non-agricultural/non-organic and synthetic substances that are allowed for use in each category of organic production.

All materials and substances intended for use on NOFA NY, LLC certified operations are reviewed for compliance with Section 205.105 and Sections 205.600-606 (National List of Allowed and Prohibited Substances) of the National Organic Regulations. Review may be performed by qualified staff.

Together, NOFA-NY, LLC and Vermont Organic Farmers, LLC (VOF) have established a shared Livestock Materials Review Program, acting in accordance with NOP Interim Instruction 3012 and the combined internal policies of both organizations. The purpose of this shared program aims to conserve resources and standardize material reviews for producers within our region.

NOFA-NY, LLC has a subscription with OMRI and consults with them as necessary. OMRI-listed, WSDA-listed, CDFA-listed and EPA Approved for Organic Use materials are allowed without further review, provided they are used as listed or as annotated in specific categories.

2.4. Temporary Variances

Temporary variances from the requirements in §205.203 through 205.207, 205.236 through 205.240 and 205.270 through 205.272 may be established by the NOP.

Upon notification from the NOP of the establishment of a temporary variance, NOFA-NY Certified Organic LLC will notify each certified operation to which the temporary variance applies, along with all inspectors, reviewers and office staff. This will be done via direct mail/email. Temporary variances will be documented as part of the final review summary and considered for all applicable certification decisions.

2.5. Withdrawal of Application / Surrender of Certification

Operations that have submitted applications for initial or continuing certification may withdraw their application at any time. A written request is required to request a refund. Only accounts paid in full are eligible to request a refund.

- An operation that withdraws an application or surrenders certification shall be liable for the costs of services provided up to the date of withdrawal of the application, including inspection. Operations will not be eligible for a refund after the on-site inspection has been conducted.
- If the certification fee was not paid in full and the amount paid at the date of withdrawal or surrender is not sufficient to cover costs incurred at the time of withdrawal or surrender, the balance will be billed to the operation.
- If a certified operation does not intend to continue certification, they must submit written notification and voluntarily surrender their certificate to the certification office.
- An operation that voluntarily withdraws an application or surrenders certification prior to applicable due dates will not be issued a notice of noncompliance.

- An operation for initial certification that voluntarily withdraws its application prior to applicable due dates will not be issued a notice of certification denial.

This manual outlines fees associated with operations who do not submit an annual application by the annual due date with the intent to surrender certification or switch certifiers.

2.6. Monitoring Continued Compliance

Continued compliance of operations is monitored through complaint investigation, conducting unannounced inspections, and residue testing. Producer responses to requests for additional information, changes in OSP, correction of noncompliances, etc., are monitored and tracked by the certification office by assigning a due date for submission.

2.7. Testing for Residues (§205.670)(a-d)

The National Organic Program regulations require all organic certifying agencies to conduct residue testing every year on at least 5% of the operations they certify. In addition to meeting requirements put forth by the NOP, residue testing is important in monitoring compliance, preventing fraud, and boosting consumer confidence in the organic label. Operations are selected by specified crops/products to be tested that year, risk assessment (such as buffer zone issues or split operations), or by random selection to fulfill the required percent. Depending on the criteria used from one year to the next, an operation may potentially be selected two years in a row.

2.7.0. Accessibility

All agricultural products that are to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic" (specified ingredients or food group(s)) must be made accessible by certified organic production or handling operations for examination by the USDA AMS Administrator, the applicable State organic program's governing State official, or NOFA-NY Certified Organic LLC.

2.7.1. Reasons for Testing

The USDA AMS Administrator, applicable State organic program's governing State official, or the certifying agent may require pre-harvest or post-harvest testing of any agricultural input used or agricultural product to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" when there is reason to believe that the agricultural input or product has come into contact with a prohibited substance or has been produced using excluded methods. Such tests must be conducted by the State organic program's governing State official at their own expense, or at the NOFA-NY Certified Organic LLC Program expense. Testing may also be based on specific products, risk assessment, or random selection.

2.7.2. Collection

The pre-harvest or post-harvest sample collection must be performed by an inspector representing the USDA AMS Administrator, applicable State organic program's governing State official, or NOFA-NY Certified Organic LLC. Sample integrity must be maintained throughout the chain of custody, and residue testing must be performed in an accredited laboratory. The specific sampling techniques used are dependent upon the testing requirements. Inspectors will work with the testing laboratory to meet their sampling requirements.

Chemical analysis must be made in accordance with the methods described in the most current edition of the Official Methods of Analysis of the AOAC International or other current applicable validated methodology determining the presence of contaminants in agricultural products.

2.7.3. Results Analysis

Results of analyses and tests performed under this section will be sent to the inspected operation. Results will also be provided to the USDA AMS Administrator as needed; Except, that, where a State organic program exists,

test results and analyses shall be provided to the State organic program's governing State official as needed by the applicable certifying party that requested testing; and available for public access, unless the testing is part of an ongoing compliance investigation.

Results must be promptly reported to the Food and Drug Administration or the Environmental Protection Agency if test results indicate a specific agricultural product contains pesticide residues or environmental contaminants that exceed their regulatory action level / tolerances. They will also be promptly reported to the appropriate State health agency or foreign equivalent if test results exceed federal regulatory tolerances.

2.7.4. Conducting of Tests

Testing may be conducted during specific sample collection visits, annual inspections, spot inspections or unannounced inspections.

2.7.5. Exclusion from Organic Sale (§205.671)

The agricultural product must not be sold, labeled, or represented as organically produced when residue testing detects prohibited substances at levels indicated in NOP regulations section 205.671 and in NOP Handbook instruction document NOP 2613. Operations will be notified if this is the case.

The Administrator, the applicable State organic program's governing State official, or the certifying agent may conduct an investigation of the certified operation to determine the cause of the prohibited substance.

2.8. Emergency Pest or Disease Treatment (§205.672)

When a prohibited substance is applied to a certified operation due to a Federal or State emergency pest or disease treatment program and the certified operation otherwise meets the NOP requirements, the certification status of the operation shall not be affected because of the application of the prohibited substance as long as:

- any harvested crop or plant part to be harvested that has contact with a prohibited substance applied as the result of a Federal or State emergency pest or disease treatment program is not sold, labeled, or represented as organically produced;
- any livestock that are treated with a prohibited substance applied as the result of a Federal or State emergency pest or disease treatment program or product derived from such treated livestock cannot be sold, labeled, or represented as organically produced: *Except,* That:
    - Milk or milk products may be sold, labeled, or represented as organically produced beginning 12 months following the last date that the dairy animal was treated with the prohibited substance; and
    - The offspring of gestating mammalian breeder stock treated with a prohibited substance may be considered organic: *Provided,* That, the breeder stock was not in the last third of gestation on the date that the breeder stock was treated with the prohibited substance.

2.8.0. Notification and Recordkeeping

Upon occurrence of Federal or State emergency pest or disease treatment, applicable certified operations, inspectors, reviewers and office staff will be notified of the requirements of 205.672. Reviewers will include information in the final review summary and determination letter to the operation. Subsequent office review will ensure labeling, and sales claims are compliant with the regulations.

3. Transition Monitoring

Operations interested in Transition Monitoring of land for crop production or of a dairy herd will follow the certification process; however the organic certificate will not be issued until the production areas have been fully approved for certification. Upon final review and decision of an application for Transition Monitoring, a transition end date will be established.

3.0. Transition Monitoring – Land

Operations interested in third party verification of transition of land for organic crop production will complete the application for initial certification for the crop category but pay Transition Monitoring fees. If approved for Transition Monitoring, the certification office will issue a letter to insurance companies, FSA offices or other agencies as requested by the applicant, verifying the operation is transitioning to organic production.

Annual update of information and payment of Transition Monitoring fees will be required to continue Transition Monitoring for periods over one year. At the beginning of the final year of transition, the operation will be evaluated for full certification and will pay the certification fee based on projected gross organic sales.

3.1. Transition Monitoring - Dairy Herd

NOP Regulations allow for a one-time conversion of an entire distinct dairy herd to organic production for new livestock operations.

3.1.0. Land

Land must either be eligible for certification or entering its third year of transition (T3) at the beginning of a dairy herd transition. If the land appears to be eligible for certification, the operation will apply for initial crop certification with Transition Monitoring for Dairy. If the land is in its third year of transition, the operation will apply for Land and Dairy Transition Monitoring.

3.1.1. Animals

All animals to be transitioned must be on the farm at the start of transition. Animals must be under continuous organic management for a minimum of one year before they can be certified to produce organic milk.

3.1.1.0. Existing Herd

An operation with an existing conventional herd will complete the application paperwork for a livestock application, which includes the necessary paperwork for crop certification. All documentation will be evaluated and the entire operation inspected. Prior to the end of transition of the dairy herd, an additional inspection may be necessary if there were areas of concern identified during the initial inspection, or if any area of production could not be observed at the time of initial inspection.

3.1.1.1. Herd addition after submission of crop application

An operation that does not have an existing herd and wishes to add Transition Monitoring of a dairy herd at a later date may either submit livestock paperwork at the time of initial certification of their land, or at a later date when they expect to obtain the animals. An animal list that includes all animals to be transitioned must be submitted upon prior to the planned transition start date.

3.1.2. Grass Fed

See NOFA-NY 100% Grass Fed or Organic Plus Trust Organic Grass Fed Livestock program manual for specific requirements.

4. The Inspection Process

4.0. Inspector Role

The inspector's role is to observe and verify that the organic practices in the operation's OSP are being implemented as described. Inspectors are responsible for providing the quality assurance and integrity link between the operation and the Certification Program. The individual conducting the inspection shall not make a certification decision regarding an operation that he/she has inspected during the preceding 12-month period.

The Inspector is responsible for inspection and document review related to all aspects of the operation:

- Visiting fields, production areas and facilities included in the OSP.
- Identifying practices, materials, or production processes that are not in compliance with the NOP Regulations.
- Communicating potential areas of noncompliance to the operator and the Certification Program.

4.1. Inspector Choice

NOFA-NY Certified Organic LLC reserves the right to make all inspection assignments and the right to use subcontractors for inspection as necessary. An operation may not influence the choice of inspector or contact inspectors directly to solicit inspection assignments. The operation has the right to be informed about the identity of the inspector before the inspection visit. Moreover, the operator may raise objections based on conflicts of interest or other reasons by submitting the objections, in writing, to NOFA-NY Certified Organic LLC, which shall make determination with respect to the final assignment.

4.2. Inspection Scheduling

The Inspector is responsible for scheduling and completing all inspection visits. Inspections shall be grouped by geographical areas whenever possible to minimize inspection travel costs. Inspections for initial applications shall be scheduled as early in the season as possible but must be scheduled within six months following receipt of a complete application that appears to comply or may be able to comply with the NOP requirements. The length of on-site inspections vary depending on the size and complexity of the operation. Inspectors and operators should be flexible when scheduling an inspection. Inspectors should be prepared with options for date and/or time, and operator shall make accommodation as required. Failure to complete an annual inspection or to cooperate with the inspector to schedule the inspection within a reasonable timeframe will result in initiation of noncompliance procedures.

4.3. Inspection Cancellation

Scheduled inspections may be cancelled up to nine (9) calendar days prior to the appointment without penalty. Inspections cancelled under 9 days from the scheduled date may result in the producer being billed for a cancelled inspection. Should nonrefundable fees be incurred by the inspector outside of the 9 day window, it is at the Associate Directors discretion to charge the producer these incurred fees. Additionally, failure of the operation to provide an authorized representative on-site at the time of inspection shall result in cancellation. The operation shall be responsible for the actual cost of the cancelled inspection.

4.4. Annual Inspection

4.4.0. Inspection Overview: All Operations

All operations are subject to inspection and review of documentation related to all aspects of their operation for compliance with the NOP Regulations and International Equivalency requirements if applicable. All production areas and documentation related to organic production must be available for review at the time of inspection. The practices and documentation, as well as those specific to each certification category listed below highlight the components of the inspection process. Since individual operations differ, the inspection may include review and observation other than that specifically listed.

- Opening meeting and initial discussion with authorized representative(s) regarding the process to be used to complete the inspection.
- Explanation that the inspector is only an observer and does not make the final certification decision.
- Field/crop tissue, ingredient, or finished product samples may be collected for residue testing. Samples must be provided to the inspector at no charge and a receipt will be provided.
- Observation and review of production practices and areas.

- Equipment being used by the operation.
- Input materials and cleaning/pest control materials, for use and appropriate storage.
- Audit Trail (Documentation of all activities and transactions of the operation in sufficient detail to be readily understood and audited).
- In/Out balancing (Mass Balance) and traceability audit.
- Closing meeting including summary of inspection visit & Exit Interview with operator to discuss accuracy of observations, areas of noncompliance and additional information needed.
- A copy of the Exit Interview form will be provided to the operator.

4.5. Additional Inspection

Additional inspection(s) may be needed to observe all production areas and practices:

- If all the necessary information and/or documentation is not available for the inspector to review, or if certification is granted with a condition for additional inspection.
- If more than one location is certified.
- If production types require inspection at different times of the year to observe activities.
- To verify actions taken to correct noncompliance(s).
- To assess compliance of changes and/or additions to the Organic System Plan.

The applicant will be billed for the actual costs of additional inspection(s) including additional review fees.

4.6. Unannounced Inspection

A minimum of 5% of total certified operations shall be subject to an unannounced inspection each year. Selection of operations to be inspected may be risk based or randomly selected by the certification office. Unannounced inspections may be conducted on an entire operation or limited in scope with pre-determined areas for review and observation. Unannounced inspections must occur onsite to count towards the 5% minimum.

The Inspector shall complete an Inspection Report and Exit Interview form for the applicable certification category if inspection of the entire operation is conducted. For inspections of limited scope, the Inspector shall complete the Unannounced Inspection Report and the Exit Interview form.

The operation shall not be invoiced for an unannounced inspection unless prior notification is given by the certification office. Potential reasons for NOFA-NY invoicing a producer for this service may include, but are not limited to:

- Verification of corrective actions.
- Complaint or other investigation.
- Any other reason deemed appropriate by NOFA-NY.

4.7. Inspection Audit Procedures

An audit trail review is essential to the inspection process to ensure organic integrity and prevent fraud. The NOP Program Handbook Guidance 2601 states that the inspection must include, but is not limited to: Reconciliation of the volume of organic products produced or received with the amount of organic products shipped, handled and/or sold, also known as trace-back audits or in-out balances

- Audit Trail/Trace-back – Documentation that demonstrates that a single organic product or organic finished product with ingredients sold can be traced back to an organic supplier or field harvest/seed purchase.

- In/Out or Mass Balance –A process of totaling the production capacity during a period of time and the total sales during same period including changes to beginning and ending inventories.
  Formula examples:
  a) Beginning inventory + Purchases – Ending inventory = Quantity available for planting or production
  b) Beginning inventory + Quantity harvested – Quantity used for seed/loss – Ending inventory = Quantity available for sale
  c) Beginning inventory + Production or Purchases – Ending inventory = Quantity available for sale

Operations applying for initial certification as well as operations continuing certification must make their records available for the inspector to review. Inspectors are required to review the entire record keeping system.

If the records necessary to complete the review are not available, or the audit review identifies areas of noncompliance, noncompliance notification procedures will be initiated. An additional inspection visit may be necessary to verify correction of any noncompliance of this type.

Since operations applying for initial certification have not yet had organic sales for review, the inspector must review the proposed system and determine if it is adequate.

5. Fees and Financial Policies and Procedures

Funding for the operation of NOFA-NY Certified Organic LLC is obtained from fees paid by operations for certification services.

5.0. Certification Fees

Fees are established annually by the Management Committee. ***If payment is not received by the due date, Noncompliance Notification Procedures will be initiated, late notices will be issued, and an additional penalty fee assessed.***

5.0.0. Certification Application Packet Fee

The Certification Application Packet includes: the USDA National Organic Program Regulations, NOFA-NY Certified Organic, LLC Policy Manual, the application paperwork with associated forms necessary for a complete Organic System Plan, and the Fee Determination Form. The NOP Regulations and Certification Manuals may also be purchased in hard copy form without application paperwork.

- Certification Application Packet: $50.00 plus NYS sales tax when applicable.
- NOP Regulations/Policy Manuals: $20.00 plus NYS sales tax when applicable.
- Electronic versions are available free of charge via email and on our website www.nofany.org.

5.0.1. New Applicant Fees

An additional one-time new applicant fee of $300.00 is also required. An existing producer adding a location does not pay a new applicant fee.

5.0.2. Paper Correspondence Fee

An additional annual fee of $150.00 is due for producers that choose to receive their annual application and additional determinations by mail. This covers all paper correspondence.

5.0.3. Late Application/Late Payment Fees

Complete applications for continuing certification must be submitted by the due dates established for each certification category. Applications or fee payments postmarked or submitted electronically past due date will incur a $250.00 fee.

5.0.4. Split Payment Option

Fifty percent (50%) or one-half of the certification fee must be submitted with the application for initial or continuing certification. The remaining balance must be paid by August 1st of each year. This payment option is only available to customers through June 1st. NOFA-NY Certified Organic, LLC reserves the right to approve additional payment plan installment agreements on a per operation basis.

A Payment Plan Installment Fee of $10.00 per installment payment shall be applied for any operation electing to pay certification fees in installments.

The certification agency reserves the right to withhold availability of the Split Payment Option to operations that have demonstrated a poor payment history for two or more years.

Applications received from operations with poor payment history, outstanding balances on account or other irregularities shall not be processed until the full fee is received and cleared.

If any portion of the annual certification fee remains unpaid after August 1st, a notice of noncompliance shall be issued, and an additional penalty fee shall be assessed.

5.0.5. Certification Fees: Crop, Livestock, Wild Crop Operations

Fees are set on a sliding scale, based upon gross organic sales. Gross organic sales consist of sale of products/services from certified fields/forest, livestock, on-farm processing, and facilities. The operator selects the category on the Certification Fee Determination form that is an accurate representation of their gross organic sales. Certification Fees are capped at $17,975 excluding additional fees (i.e. inspection costs, expedited etc).

Fees for initial certification are based upon the first year's projected (estimated) gross organic sales. Fees for continuing certification (renewal) are based upon actual gross organic sales from the prior calendar year.

Sales documentation must satisfy the NOFA-NY Certified Organic, LLC and inspector and all such information shall be kept confidential by the agency. Operations that cannot or refuse to provide adequate documentation to support their claimed gross sales figure will be assessed an annual fee based on a gross sales figure determined by NOFA-NY Certified Organic LLC.

Annual Certification Fee Chart- Crop, Livestock, Wild Crop Operations

Gross Organic Sales (I.e., Schedule F, Sales Records, Profit/Loss Statement, etc.)		**Certification Fee** (Refer to your Organic Certificate & OSP to determine Scopes)			
From	To	Crops	Crops & Handling	Crops & Livestock	Crops, Livestock & Handling
$0	less than $15,000	$860	$935	$910	$985
$15,000	less than $25,000	$905	$980	$955	$1,030
$25,000	less than $35,000	$980	$1,055	$1,030	$1,105
$35,000	less than $ 50,000	$1,050	$1,125	$1,100	$1,175
$50,000	less than $65,000	$1,235	$1,310	$1,285	$1,360
$65,000	less than $80,000	$1,300	$1,375	$1,350	$1,425
$80,000	less than $100,000	$1,470	$1,545	$1,520	$1,595
$100,000	less than $125,000	$1,610	$1,685	$1,660	$1,735
$125,000	less than $150,000	$1,720	$1,795	$1,770	$1,845
$150,000	less than $175,000	$1,810	$1,885	$1,860	$1,935
$175,000	less than $200,000	$1,995	$2,070	$2,045	$2,120
$200,000	less than $225,000	$2,100	$2,175	$2,150	$2,225
$225,000	less than $250,000	$2,415	$2,490	$2,465	$2,540
$250,000	less than $300,000	$2,540	$2,615	$2,590	$2,665
$300,000	less than $400,000	$2,730	$2,805	$2,780	$2,855
$400,000	less than $500,000	$2,900	$2,975	$2,950	$3,025
$500,000	less than $600,000	$3,170	$3,245	$3,220	$3,295
$600,000	less than $700,000	$3,320	$3,395	$3,370	$3,445
$700,000	less than $ 800,000	$3,625	$3,700	$3,675	$3,750
$800,000	less than $900,000	$3,930	$4,005	$3,980	$4,055
$900,000	less than $1,000,000	$4,230	$4,305	$4,280	$4,355
$1,000,000	less than $1,500,000	$5,135	$5,210	$5,185	$5,260
$1,500,000	less than $2,000,000	$5,435	$5,510	$5,485	$5,560
$2,000,000	less than $2,500,000	$5,800	$5,875	$5,850	$5,925
$2,500,000	less than $3,000,000	$6,280	$6,355	$6,330	$6,405
$3,000,000	less than $3,500,000	$7,370	$7,445	$7,420	$7,495
$3,500,000	less than $4,000,000	$8,695	$8,770	$8,745	$8,820
$4,000,000	less than $5,000,000	$10,145	$10,220	$10,195	$10,270
$5,000,000	less than $7,500,000	$13,650	$13,725	$13,700	$13,775
$7,500,000	less than $10,000,000	$15,750	$15,825	$15,800	$15,875
$10,000,000	or more	$17,850	$17,925	$17,900	$17,975

5.0.5.0. Transitioning Monitoring Fees – Land

Transition Monitoring: See Transition Fee Determination Form.

Inspection Deposit $350.00 per year in transition..

If the actual cost of inspection exceeds the deposit, the operation will be billed the difference. If the actual cost is less than the deposit, the difference will be refunded to the operation.

5.0.5.1. Transition Monitoring Fees – Dairy

$100.00 flat fee in addition to applicable Certification or Transition Monitoring fee for land.
If the operation's land appears to be eligible for certification, the operation agrees to pay the certification fee plus the Dairy Transition Monitoring fee.
If the operation's land is in its third year of transition, the operation agrees to pay the fee for Transition Monitoring for Land plus the Dairy Transition Monitoring fee.
The operation also agrees to pay the actual cost of any additional inspection, if necessary, prior to end of transition.

5.0.6. Certification Fees: Handling Operations

Handling Operations are required to submit a Certification Fee and Inspection Fee Deposit with their application for initial or continuing certification. Sales documentation must satisfy NOFA-NY Certified Organic, LLC and inspector and all such information shall be kept confidential. Operations that cannot or refuse to provide adequate documentation to support their claimed gross sales figure will be assessed an annual fee based on a gross sales figure determined by NOFA-NY Certified Organic, LLC.

Certification Fees for Handling Operations are set on a sliding scale, based upon gross organic sales, as noted below. Certification Fees are capped at $18,000 excluding additional fees (i.e. inspection costs, expedited etc).

Fees for initial certification are based upon the first year's projected (estimated) gross organic sales. Fees for continuing certification (renewal) are based upon actual gross organic sales from the prior calendar year.

- Minimum Inspection deposit of $350.00 or operation may elect to pay a deposit for the average inspection cost of $750.00.
- If the actual cost of inspection exceeds the deposit, the operation will be billed the difference. If the actual inspection cost is less than the deposit, the difference will be refunded to the operation.
- Crop and Livestock Scope Fee Add On: Base fee of $250.00 (crop) or $300.00 (crop + livestock) plus added inspection fees is applicable. The average cost of a Handling inspection with an additional scope is $950.
- Grass Fed handling operations certified to the Organic Plus Trust Grass Fed Organic Livestock Program (OPT) will include their organic grass-fed sales in the gross organic sales identified above.

Annual Certification Fee Chart- Handling Operations

Gross Organic Sales (I.e., Schedule F, Sales Records, Profit/Loss Statement, etc.)		**Certification Fee** Handling Scope
From	To	Amount to use on Certification Fee Worksheet
$0	less than $15,000	$775
$15,000	less than $25,000	$800
$25,000	less than $35,000	$865
$35,000	less than $ 50,000	$900
$50,000	less than $65,000	$1,020
$65,000	less than $80,000	$1,055
$80,000	less than $100,000	$1,210
$100,000	less than $125,000	$1,380
$125,000	less than $150,000	$1,435
$150,000	less than $175,000	$1,595
$175,000	less than $200,000	$1,690
$200,000	less than $225,000	$1,995
$225,000	less than $250,000	$2,130
$250,000	less than $300,000	$2,290
$300,000	less than $400,000	$2,545
$400,000	less than $500,000	$2,900
$500,000	less than $600,000	$3,170
$600,000	less than $700,000	$3,320
$700,000	less than $ 800,000	$3,625
$800,000	less than $900,000	$3,930
$900,000	less than $1,000,000	$4,100
$1,000,000	less than $1,500,000	$4,695
$1,500,000	less than $2,000,000	$5,435
$2,000,000	less than $2,500,000	$5,800
$2,500,000	less than $3,000,000	$6,280
$3,000,000	less than $3,500,000	$7,370
$3,500,000	less than $4,000,000	$8,695
$4,000,000	less than $5,000,000	$10,145
$5,000,000	less than $7,500,000	$13,650
$7,500,000	less than $10,000,000	$15,750
$10,000,000	Less than $15,000,000	$17,850
$15,000,000	or more	$18,000

5.0.7 Certification Fees: Distributors

NOFA-NY defines a Distributor as an operation that performs any of the following types of activities: broker, trader, importer, exporter, distribution, service provider, private label brand owner. These operations are required to submit a Certification Fee and Inspection Fee Deposit with their application for initial or continuing certification. Sales documentation must satisfy NOFA-NY Certified Organic, LLC and inspector and all such information shall be kept confidential. Operations that cannot or refuse to provide adequate documentation to support their claimed net sales figure will be assessed an annual fee based on a net sales figure determined by NOFA-NY Certified Organic, LLC.

Certification Fees for Distributor Operations are set on a sliding scale, based upon net organic sales, as noted below. Certification Fees are capped at $17,850 excluding additional fees (i.e. inspection costs, expedited, etc).

Fees for initial certification are based upon the first year's projected (estimated) net organic sales. Fees for continuing certification (renewal) are based upon actual net organic sales from the prior calendar year.

- Minimum Inspection deposit of $350.00 or operation may elect to pay a deposit for the average inspection cost of $750 - $900.
- If the actual cost of inspection exceeds the deposit, the operation will be billed the difference. If the actual inspection cost is less than the deposit, the difference will be refunded to the operation.
- Additional fees will be assessed for changes or additions to certification.

Annual Certification Fee Chart- Distributors

Net Organic Sales (Net Organic Sales = Gross Organic Sales – Cost of Goods Sold)		**Certification Fee** Handling Scope
From	To	Amount to use on Certification Fee Worksheet
$0	less than $15,000	$860
$15,000	less than $25,000	$905
$25,000	less than $35,000	$980
$35,000	less than $ 50,000	$1,050
$50,000	less than $65,000	$1,235
$65,000	less than $80,000	$1,300
$80,000	less than $100,000	$1,470
$100,000	less than $125,000	$1,610
$125,000	less than $150,000	$1,720
$150,000	less than $175,000	$1,810
$175,000	less than $200,000	$1,995
$200,000	less than $225,000	$2,100
$225,000	less than $250,000	$2,415
$250,000	less than $300,000	$2,540
$300,000	less than $400,000	$2,730
$400,000	less than $500,000	$2,900
$500,000	less than $600,000	$3,170
$600,000	less than $700,000	$3,320
$700,000	less than $ 800,000	$3,625
$800,000	less than $900,000	$3,930
$900,000	less than $1,000,000	$4,230
$1,000,000	less than $1,500,000	$5,135
$1,500,000	less than $2,000,000	$5,435
$2,000,000	less than $2,500,000	$5,800
$2,500,000	less than $3,000,000	$6,280
$3,000,000	less than $3,500,000	$7,370
$3,500,000	less than $4,000,000	$8,695
$4,000,000	less than $5,000,000	$10,145
$5,000,000	less than $7,500,000	$13,650
$7,500,000	less than $10,000,000	$15,750
$10,000,000	or more	$17,850

5.1. Inspection Fees

5.1.0. Crop, Livestock and Wild Crop Operations

There is a flat inspection fee for annual inspection - $350 for crop, and $450 for livestock operations. The inspection fee is due at time of application with the annual certification fee. The operation will be billed for the actual cost of any additional or unannounced inspections as applicable, including inspection cancellations. Out of state operations and operations with additional location(s) may also incur an additional inspection cost. **Additional fees for handling/processing may be incurred based on complexity.*

5.1.1. Handling and Distributor Operations

The actual cost of inspection is billed to the operation, based on complexity of the operation and length of the inspection, and includes inspector travel, lodging and office expenses incurred. Inspection deposit will be deducted from actual cost of inspection and balance will be billed or credit will be issued once inspection has occurred.

5.1.2. Additional Inspection/Review Fees

An additional inspection/review fee will be charged for any operation who requires additional work by the Certification Staff or Inspector. Conditions that may require an additional fee are as follows: additional inspection to gather new information, add production types, new fields, livestock, or to inspect another part of the operation; an additional audit trail review of a farm or processing application; or inspection of a farm/processor whose facilities are in different locations.

The minimum fees are:

- Additional Inspection: Actual Inspection cost plus all inspector travel.
- Additional Review by Certification Staff: $70.00/hour

5.1.3. Unannounced Inspection Fees

The applicant shall be billed in accordance with section 4.6 for all direct costs for unannounced inspections that result in issuance of a notice of noncompliance or investigation of complaints that results in a noncompliance, including those needed to verify compliance when considering reinstatement of a certification that has been suspended. NOFA NY reserves the right to bill the client for residue testing that is part of an investigation.

5.1.4. Inspection Cancellation

On-site or virtual inspections cancelled nine (9) calendar days or less from scheduled date will result in producer being billed for actual cost of cancelled inspection. Additionally, the producer shall be liable for all actual costs of the cancelled inspection should the producer fail to provide an authorized representative on site at the time of inspection. If a cancelled inspection fee is not paid within thirty (30) calendar days, the agency may file a Noncompliance Notification.

5.2. Grass Fed Certification Fee

NOFA-NY Certified Organic, LLC currently offers an optional additional certification that is open to all ruminant livestock operations and handlers of ruminant livestock products currently certified organic by NOFA-NY Certified Organic, LLC.

- NOFA-NY 100% Grass Fed Certification: $125.00 per year (plus additional inspection if not included with the annual inspection). This is an internal program developed by NOFA-NY Certified Organic, LLC.
- Organic Plus Trust Grass Fed Organic Livestock Program (OPT): $300.00 per year, with possible $30.00 fee for extra Grass Fed transitions as determined by NOFA-NY. Grass Fed certification required by some milk companies. NOFA-NY Certified Organic, LLC is accredited to this program.

5.3. Refund Policy - Certification or Transition Monitoring

A new operation that has withdrawn its application and has submitted a written request for a refund prior to inspection, shall receive a refund of not more than 50% of paid certification fees. Only operations that have paid their balance in full are entitled to a refund under the provisions of this policy. Once the inspection has occurred, the operation shall be ineligible to receive a refund. Operations that have been denied certification/transition are ineligible to receive a refund. The request for a refund shall be made no later than three (3) months after date of withdrawal acknowledgement.

Renewal operations who surrender after September 30th will not be eligible for a refund. Renewal operations who surrender prior to September 30th and have not had inspection will be eligible for a 50% refund provided a refund is requested in writing no later than 3 months from the date of the surrender acknowledgement and their outstanding balance has been paid in full at the time of request.

Expedite fees are non-refundable.

5.4. Unpaid Fees

NOFA-NY Certified Organic LLC will make every effort to work with operations to set up a payment plan for past due certification fees. Non-payment of certification fees, inspection fees, or handler sales assessment fees will result in initiation of Noncompliance Notification Procedures.

Independent collection agencies may be utilized to obtain the past due certification and inspection fees.

5.5. Complaint, Investigation & Mediations

Applicants and certified operations are responsible for reimbursing NOFA-NY for all costs incurred by NOFA-NY as a result of, investigations, legal issues, and complaints involving the applicant or certified operation. These may include but are not limited to: sanctions, adverse actions, complaints, appeals, mediation, litigation, or enforcement actions.

The costs that the applicant or certified producer must reimburse include but are not limited to: the costs of conducting mediation, investigations, conducting additional inspections, conducting discovery, and responding to subpoenas or other discovery requests. Formal mediation costs are billed at $250.00 plus $70.00/hour. Informal mediation costs are billed at $150.

NOFA-NY does not bill for random sample pesticide residue testing as required by the regulations but reserves the right to charge for residue testing that is the result of an investigation.

5.6. Fees for Public Access to Information

The National Organic Program requires that specific information be made available to the public regarding the operations we certify. A current listing of our certified operations is available on the National Organic Program Organic Integrity Database website https://apps.ams.usda.gov/integrity/. A fee will be charged for previous lists of certified operations and other public information requested, based on the office time necessary to retrieve and copy the information from our files.

5.7. Additional Fees

The annual certification fee includes the Initial Review and Final Review of the application for initial or continuing certification. Review of changes or additions to certification, and other services that require additional staff time outside the annual process are billed separately at the Administrative Fee rate below.

Changes and additions to certification requiring inspection that are received after the Initial Review has been completed, but allow sufficient time to be evaluated and included in the annual inspection, will not be assessed additional inspection fees.

Paper Correspondence Fee: $150 annual fee to cover document processing and postage for paper correspondence for the year.

Expedited Application: $3,000.00 additional fee for top priority application processing. Locations outside of New York State may also incur added inspection fees. Expedite fees are not refundable.

- Expedited Service is only available at the discretion of the certification office, based on staff and inspector availability and current workload within the certification office at the time of the request.
- Inspection report will be submitted to the office within 5 business days after the completed inspection.
- Certification decision will be submitted to the operation within 5 business days after the inspection report receipt. Certification approval is not guaranteed.
- Expedited service begins when the office receives a completed Expedited Service Request form signed by the operator, payment, and a complete application.

Late Payment Fee: $ 250.00 will be charged for payment fees postmarked or submitted electronically after due date. This payment is applicable for any invoice that is past due. For late payments for renewal applications, please refer to Section 5.1.4 – Late Application/Late Payment Fees.

Incomplete Application Fee: $250.00 fee will be assessed for annual update applications remaining incomplete after the due date established in the application packet.

No Response/Partial Response Fee: $30.00 will be charged for failure to submit a response or failure to submit a complete response by deadline given. (E.g., failure to respond to Determination Notice by due date).

Payment Plan Installment Fee: $10.00 per installment payment covering additional administration cost for operations electing to pay certification fees in installment. Not applicable to split payment option.

Noncompliance Fee: $100 fee to be assessed for each issuance of notice of noncompliance and subsequent process related to that notice.

Mediation Fee: Assessed when mediation is requested to resolve Adverse Action.

- Informal Mediation: $150.00
- Formal Mediation: $250.00 + $70.00/hour

Reinstatement Request Fee: $300.00 Administrative fee will be assessed to process requests for reinstatement of a suspended operation, plus any other additional fees applicable based on the timing and nature of the suspension (E.g., annual certification fees, additional inspection fees). The producer will also be responsible for any past due balance from prior certification periods.

On-Farm Processing/Handling Tier Fees: Additional fees for crop & livestock operations with a handling scope will be assigned by the certification office as applicable based on complexity. This covers the extra inspection and review time needed to fully verify compliance. Tier fees will be assessed annually in addition to the $75 (Tier 1) handling scope fee already assessed as part of the base certification fee.

- Tier 2 - $150.00
- True cost inspection fees may be billed to the applicant if higher costs are incurred due to complexity, as required by operations with non tiered Handling operations.

Administrative Fee: $70.00/hour (30 minutes minimum) for any service not otherwise specified.

Changes & Additions:

- **Additional Inspection Fee:** Actual inspection cost plus inspector travel

- **Additional Review Fee** (outside of annual review cycle)**:** $70.00/hour (30 minutes minimum) – review of new fields, animals, new recipes, process, labels, certificate, final review rushed within two weeks of receiving file from inspector, etc.
- **Material Review Fee:** $25.00 flat rate charged annually.
- **Rush Review Fee (5 Business Day Turnaround):** $300.00/request + applicable additional review fees – review of products, ingredients, suppliers, final review, etc. Subject to office availability and fee submission. Five-day turnaround for decision, approval dependent on complete and compliant documentation.

NOP Transaction Certificates/Import Certificates/Certificates of Inspection *(for export through international equivalencies)*: $75.00 each plus shipping charges, provide carrier/account info for billing as applicable. Rush Review Fee applies if requested with five-day turnaround.

Returned Check: $25.00 plus bank fee for each time a check is returned as unpaid, for any reason. A returned check will disqualify the operation from receiving any discounts.

5.8. Certified Operations

5.8.0. Complying with Certification Requirements

Organic certification is a voluntary third party verification process. By requesting initial or continuing certification, operators agree to comply with all requirements stipulated in the applicable NOP Regulations. Operators must sign the Applicant Affirmation Statement of Agreement contained in the certification application for their application to be processed.

5.8.1. Make Available all Necessary Components for Evaluation

Access to all documentation and production areas, personnel for evaluation is required.

5.8.2. Make Appropriate Certification Claims

Certification claims must accurately reflect the approved category and production for which organic certification has been granted.

5.8.3. Protect the Certifier from Disrepute

Certification must be used in a manner that does not harm NOFA-NY Certified Organic, LLC and does not make unauthorized or misleading certification claims.

5.8.4. Discontinue Use of Certification Claims

Use of certification claims must be immediately discontinued upon surrender, suspension or revocation of certification and any certification documents required by NOFA-NY Certified Organic LLC must be returned.

5.8.5. Limit the Certification Claim

Certified organic products must only be represented as certified in compliance with the NOP Regulations or as allowed under approved international equivalency arrangements.

5.8.6. Protect the Use of the Certification Claim

Operations must make every effort to ensure that the certificate and/or inspection report is not used in a misleading manner, such as representing non-certified products or services as certified.

5.8.7. Use the Certification Claim Correctly in Advertising and Marketing, including labels and seals

To avoid mislabeling or cross labeling of products, and/or to avoid consumer confusion, certified operations must:

- Use the terms “100% Organic”, "organic" or “Made with organic [specified ingredients or food group(s)]” only on products produced in accordance with the USDA NOP Regulations.
- Display the USDA Seal only on products produced in accordance with requirements for the “100% Organic” or “Organic” category. The USDA seal must not be displayed on products in the “Made with Organic [specified ingredients or food group(s)]”
- Display the statement: Certified Organic by: NOFA-NY Certified Organic LLC or similar phrase on labels that identify “100% Organic”, "Organic" or “Made with organic [specified ingredients or food group(s)]”
- Submit all printed material (labels, brochures, advertising materials, etc.,) to the certification office for approval prior to use.

When marketing both certified organic and non-certified products for sale:

- Maintain distinct separation between the certified and non-certified products.
- Display signage in sufficient size and prominence to distinguish Certified crops from noncertified.
- Clearly label individual bins, shelves, display areas, pick-your-own fields, etc.

5.8.8. Use the NOFA-NY Certified Organic, LLC Logo appropriately.

The NOFA-NY Certified Organic, LLC logo/seal is optional; when used it should be displayed in black & white or color as provided. Prior approval from the certification office is required.

5.9. NOFA-NY Certified Organic LLC

5.9.0. Public Access to Information

The following information is available to the general public:

- A list of operations certified by our agency during the current and 3 preceding years, including the name, type of operation (certification category), products produced, and effective date of certification is available to the public for purchase in printed form. The current list is also free of charge on the National Organic Program Organic Integrity Database website.
- A copy of a client's Certification Certificate issued during the current and 3 preceding 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.

Any other information must be requested directly from the operation. Upon their request, all client records are available to authorized representatives of the USDA Secretary or the State Organic program for review and copying during normal business hours.

5.9.1. Confidential Business Information

NOFA-NY Certified Organic LLC will maintain strict confidentiality with respect to its clients and not disclose to third parties, except as noted above, any business-related information concerning the client obtained while

conducting the certification process. Confidential business information includes specific client information including but not limited to:

- The certification fee paid and the information upon which it was based
- Marketing outlets
- Product formulation information

NOFA-NY Certified Organic LLC may release information from the client application for certification or the inspection report, to other Accredited Certification Agencies as indicated in Applicant Affirmation signed by all clients. All certification agencies are bound by the same NOP requirement for confidentiality.

5.9.2. Change in Certification Status

To protect use of the NOFA-NY Certified Organic, LLC name and logo, a change in the certification status of an operation will be posted on the Organic Integrity Database website.

5.9.3. Notification of Changes

5.9.3.0. NOP Regulations

Certified operations will be sent a copy or notice of changes in Regulations or guidance related to operators when published by the National Organic Program.

5.9.3.1. NOFA-NY Certified Organic, LLC Policy

NOFA-NY policy changes that are effective on January 1, applicable to a new certification year will be included with annual update applications or sent around the first of the year. Mid-year changes will be sent to all certified operations as applicable.

5.10. Certified Operations & NOFA-NY Certified Organic LLC

5.11.1. Code of Conduct

NOFA-NY Certified Organic, LLC seeks to continually maintain a work environment which ensures trust and respect for all producers, inspectors, NOFA staff and guests. In order to maintain our longstanding reputation in the community, we have established this Code of Conduct Policy to specify our expectations. All of these are important to our organization and to our producers' success and must be adhered to, respected, and honored by all.

The following is a list of behaviors that will not be tolerated by the agency:

- physically harming others
- verbally abusing others
- using profanity
- using intimidation tactics and/or making threats
- making malicious or harmful statements about others
- publicly disclosing another's private information.
- sexual or unwelcome harassment
- possession of dangerous or unauthorized material such as explosives or firearms

All NOFA-NY Certified Organic LLC producers, inspectors, & staff members are responsible for adhering to this code of conduct.

6. Compliance: Noncompliance, Suspension, Revocation & Denial of Certification

As a certification agency accredited by the USDA National Organic Program, we must ensure that the operations we certify comply with NOP Regulations, and we act accordingly if they do not comply. Noncompliance procedures outlined in the NOP Regulations will be followed.

6.0. Types of Sanctions

As the type and severity of noncompliance issues can range from violations of administrative requirements to fraud in organic production and marketing, the appropriate sanctions also vary. Administrative requirements include submission of annual update paperwork, payment of fees, and submission of any information requested by the certification office.

Denial of Certification is applicable only to operations requesting initial certification of an operation or part of an operation. Suspension or revocation is applicable only to continuing certified operations.

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 USDA AMS Administrator.

A certified operation or a person responsibly connected with an operation whose certification has been revoked will be ineligible to receive certification for a period of 5 years following the date of such revocation. Except, that, the Secretary may, when in the best interest of the certification program, reduce or eliminate the period of ineligibility.

6.1. Noncompliance Procedures

Operations that make false statements or knowingly sell or label a product as organic, except in accordance with the regulations, may be subject to legal action and/or civil penalties levied by the USDA.

6.1.0. Notification of Noncompliance (§205.662)

When an inspection, review, or investigation of an operation requesting initial or continuing certification reveals any noncompliance with the NOP Regulations a written notification of noncompliance shall be sent to the applicant/certified operation. Such notification shall provide:

- A description of each noncompliance
- The facts upon which the notification of noncompliance is based; and
- The date by which the applicant/certified operation must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

6.1.0.0. Response from Operation

Upon receipt of notification of noncompliance, the operation may:

- Correct noncompliances and submit a description of the corrective actions taken with supporting documentation to the certification office.
- Correct noncompliances and submit a new application to another certifying agent: Provided, That, the applicant must include a complete application, the notification of noncompliance received from the first certifying agent, and a description of the corrective actions taken with supporting documentation; or
- Submit written information to rebut the noncompliance described in the notification of noncompliance.

Failure to respond by the due date stated will result in a no response fee.

6.1.1. Resolution of Noncompliance (§205.662(b))

Upon receipt of an operation's response to a Notification of Noncompliance, NOFA-NY Certified Organic LLC will:

- Evaluate the operation's corrective actions and supporting documentation submitted, evaluate the written rebuttal, conduct an on-site inspection if necessary, and
- When the corrective action or rebuttal is sufficient for the applicant to qualify for certification, issue the applicant a Notice of Resolved Noncompliance and approval of certification.

6.1.2. Proposed Suspension or Revocation of Certification (§205.662(c))

When rebuttal is unsuccessful or correction of the noncompliance is not sufficient for the applicant to qualify for certification, or corrective actions have not been submitted within the prescribed time period, the Certification Office shall issue a written Notification of Proposed Suspension or Revocation. The proposed suspension or revocation of certification shall apply to either the entire operation or a portion of the operation, as applicable to the noncompliance.

When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or revocation of certification may be combined in one notification.

The notification of proposed suspension or revocation of certification shall state:

- The reasons for the proposed suspension or revocation;
- The facts upon which the Notice (of Proposed Suspension or Proposed Revocation) is based and the relevant sections of the regulation, 7CFR Part 205 that are in violation
- The proposed effective date of such suspension or revocation;
- The impact of a suspension or revocation on future eligibility for certification;
- The proposed length of the suspension or length of revocation;
- The right to request mediation pursuant to Section §205.663 or to file an appeal according to Section §205.681.

6.1.3. Willful Violations (§205.662(d)

If the certification office has reason to believe that a certified operation has willfully violated the NOP Regulations, the certified operation will be sent a combined Notification of Noncompliance & Proposed Suspension or Revocation of certification for the entire operation or a portion of the operation, as applicable to the noncompliance.

6.1.4. Suspension or Revocation of Certification (§205.662(e))

If the certified operation fails to correct the noncompliance, resolve the issue through rebuttal or mediation, or file an appeal of the proposed suspension or revocation of certification, NOFA-NY Certified Organic LLC shall send the certified operation a written Notification of Suspension or Revocation of certification for all or a part of the operation.

NOFA-NY Certified Organic LLC shall not send a Notification of Suspension or Revocation to a certified operation that has requested mediation pursuant to §205.663 or filed an appeal pursuant to §205.681 of the NOP Regulations for the disputed noncompliance, while final resolution of either process is pending. However, a Notification of Suspension or Revocation of certification may be issued for a separate noncompliance.

Certification is not reinstated automatically once an operation has been suspended for the timeframe specified in the Notice of Suspension. Reinstatement must be requested by the operation.

6.1.5. Reinstatement of Suspended Operation

Once an operation's certification has been suspended, only the NOP has the authority to approve its reinstatement. Certifiers may not approve or deny certification of a suspended operation without the NOP's written approval. Suspended operations must complete a new application for certification with a certifier before requesting reinstatement in order to demonstrate compliance with the regulations.

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 for reinstatement of its certification. A written request must be submitted with 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. To be eligible for reinstatement, a suspended operation must have no outstanding noncompliances. The NOP will evaluate all documentation submitted and issue notification of approval or denial of the request.

6.1.5.0. Suspended Operation Request

The following steps are required for reinstatement consideration. The suspended operation must:

- Correct all areas of noncompliance and submit complete evidence of the corrective actions to the certifying agency for review and evaluation.
- Ensure their OSP is complete, in compliance and implemented as described.
- Contact a certifier and submit a new application for certification. If the new certifier is different from the certifier that issued the suspension, the operator must inform the new certifier of its suspended status and the reasons for the suspension.
- Pay all required certification fees.
- Undergo successful inspection of their operation which verifies compliance with all areas of the NOP Regulations.
- Submit a written request for reinstatement to the Secretary of Agriculture.
- Retain copies of all documentation for future audit by the certifying agent and NOP.

6.1.5.1. Certifying Agent Evaluation and Recommendation

Upon receipt of corrective actions, complete OSP, and payment of required certification fees, NOFA-NY Certified Organic LLC will:

- Evaluate the OSP and corrective actions whether or not the operation is compliant.
- Notify the operation of any noncompliances according to 7 C.F.R. § 205.662(a). (Any noncompliances discovered after suspension as well as any remaining noncompliances that led to the operation's suspension must be addressed.)
- Schedule a full onsite inspection to verify the operation's compliance with the regulations, provided that the OSP is deemed to comply. Onsite inspections should occur within the three-month period prior to the NOP receiving the reinstatement request. Deviations from this procedure are to be justified and approved by the NOP.
- The inspection must include verification of whether (1) products were sold, labeled, or represented as organic during the suspension period, and (2) there is a system in place that will prevent comingling of noncompliant product produced or inventoried during the suspension period.
- If the certifier finds evidence of a noncompliance during the application review or inspection process, then it should issue a Notice of Noncompliance to the operation. To be reinstated, the

operation applying for reinstatement must demonstrate resolution of all noncompliances, including those that led to the suspension and any additional noncompliances identified during the reinstatement review and inspection.

- Provide recommendation to reinstate or not to reinstate as part of the documentation submitted to the NOP to evaluated the reinstatement request.

6.1.5.2. NOP Evaluation of Reinstatement Request

Once the NOP receives a reinstatement request, they will complete the following steps within approximately 30 days, although reinstatement requests with evidence of noncompliance may take longer:

- Review the request for reinstatement along with the supporting documentation and contact the certifier if questions remain regarding the request. If the operation was suspended for a specific period of time, then the NOP may deny the request for reinstatement without further review until the suspension period has ended. If the certifier recommends reinstatement before completion of the suspension period, the certifier should explain to the NOP the rationale for doing so.
- Approve the request if:
    - All required documents have been submitted;
    - The documentation clearly demonstrates the operation has corrected previously cited noncompliances, is in compliance with the regulations and is capable of remaining in compliance; and
    - The review of the documentation does not find that the operation has an ongoing history of noncompliance indicating an inability or unwillingness to remain in compliance.
- If the request is approved, the NOP will remove the operation from the public list of suspended operations. The NOP will issue a letter to the operation, with a copy to the certifier, stating that the NOP reinstates the organic certification of the operation, and all documents related to the reinstatement must be retained for future audit by the NOP.
- If the request is denied, the NOP will issue a letter to the operation, with a copy to the certifier, stating the reasons for denying reinstatement.

6.1.6. Denial of Certification (§205.405)

When the corrective action or rebuttal submitted in response to Notification of Noncompliance is not sufficient for the applicant to qualify for certification, or a response has not been submitted by the due date specified in the Notification of Noncompliance, a written Notice of Denial of certification will be sent to the operation.

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.

A notice of denial of certification must state the reason(s) for denial and the applicant's right to:

- Reapply for certification either to NOFA-NY Certified Organic LLC or
- Request mediation
- File an appeal of the denial of certification.

An operation applying for initial certification that has received a written notification of noncompliance or a written notice of denial of certification may apply for certification again at any time with any certifying agent. When such applicant submits a new application to a certifying agent other than the agent who issued the notification of Noncompliance or Notice of Denial of certification, the applicant for certification must include a copy of the Notification of Noncompliance or Notification of Denial of certification and a description of the actions taken, with supporting documentation, to correct the noncompliances noted in the notification of noncompliance.

A certifying agent who receives a new application for certification, which includes a notification of Noncompliance or a notice of denial of certification, must treat the application as a new application and begin a new application process.

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 the certification requirements pursuant to this part, the certifying agent may deny certification without first issuing a notification of noncompliance.

6.1.7. Notification to Applicants/Certified Operations

Each notification of noncompliance, noncompliance resolution, proposed suspension or revocation, denial, suspension, or revocation issued will be sent to the recipient's place of business by USPS delivery confirmation or to recipient's email by Rpost so delivery can be tracked.

6.1.8. Notification of USDA AMS Administrator

NOFA-NY Certified Organic LLC will update the Organic Integrity Database regularly of any change in status to the certified operation. This change in the Organic Integrity Database serves as means of notifying the administrator of the change.

7. Mediation (§205.663)

All operations applying for initial or continuing certification who receive an adverse action notice (Denial, Proposed Suspension, Proposed Revocation) may request mediation pursuant to the NOP Regulations.

The purpose of Mediation is to reach a Settlement Agreement with the operation that satisfies the interest of NOFA-NY Certified Organic LLC and the operation and also conforming to the Organic Foods Production Act (OFPA) and the NOP regulations. The process is confidential, quick/effective and voluntary with focus on preserving the relationship.

If mediation is accepted by NOFA-NY Certified Organic LLC, the mediation shall be conducted informally or formally by a qualified mediator mutually agreed upon by the parties to the mediation. Mediation is not a legal proceeding or a determination of fault. It does not waive the other rights such as formal appeal.

7.0. Submitting a Request

Any dispute with respect to denial of certification or proposed suspension or revocation of certification may be mediated, at the request of the applicant for certification or certified operation, with acceptance by the certifying agent. Mediation shall be requested in writing to NOFA-NY Certified Organic LLC . Submission of documentation in response to adverse action may be accepted as a request for mediation if intent is clear. All requests for Mediation will be evaluated by the certification office to determine if there is new information relevant to the original decision that could justify reconsideration.

7.1. Rejection of Request

If the certifying agent rejects the request for mediation, the certifying agent shall provide written notification to the applicant for certification or certified operation. Written notification shall advise the applicant for certification or certified operation of the right to request an appeal, pursuant to § 205.681, within 30 days of the date of the written notification of rejection of the request for mediation.

7.2. Acceptance of Request

If the certifying agent accepts mediation, informal mediation or formal mediation with a qualified mediator mutually agreed upon by the parties, shall be conducted. If a State organic program is in effect, the mediation procedures established in the State organic program, as approved by the Secretary, will be followed.

Types of Mediation

Informal: NOFA-NY Certified Organic LLC Certification Staff may settle disputes informally with operations. Mediation can be as simple as offering a proposed settlement agreement to the operator. The operator may accept or reject the settlement agreement, propose a counteroffer, or request a more formal mediation process. If an informal mediation process fails, NOFA-NY LLC has the right to reject a request for formal mediation.

- Typically addresses *administrative issues* and *low level organic integrity issues*

  Examples: Not submitting updated OSP by deadline, late payment of fees, and request for additional information from certifier not addressed by operation.

Formal: NOFA-NY Certified Organic LLC and operation will agree upon an outside Mediator including fees, time, location, and format (in-person or video). When a formal mediation is necessary to resolve a non-administrative proposed adverse action.

- Typically addresses *major organic integrity issues* and *repeat noncompliances for the same issue.*

7.3. Agreement Period

The parties to the mediation shall have no more than 30 days to reach an agreement following a mediation session. If mediation is unsuccessful, the applicant for certification or certified operation shall have 30 days from termination of mediation to appeal the certifying agent's decision pursuant to §205.681.

7.4. Compliance and Review

Any agreement reached during or as a result of the mediation process shall be in compliance with OFPA and NOP regulations. The Secretary may review any mediated agreement for conformity to OFPA and NOP regulations and may reject any agreement or provision not in conformance with OFPA or NOP regulations.

7.5. Settlement Agreement

The terms of any agreement must be mutually agreed upon, comply with the USDA organic regulations and include a timeframe by which any corrective actions will be completed. The Secretary may review any mediated agreement for conformity to the NOP and may reject any agreement or provision not in conformance with the OFPA or NOP regulations. NOFA-NY LLC may submit Settlement Agreement to NOP with request for review. The NOP will review Settlement Agreements during NOFA-NY LLC audit.

8. Appeal (§205.681 Appeals)

8.0. Submitting Appeal

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.

- If the Administrator or State organic program sustains a certification 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.
- 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.

8.1. Filing Period

An appeal of a noncompliance decision must be filed within the time period provided in the letter of notification or within 30 days from receipt of the notification, whichever occurs later. The appeal will be considered "filed" on the date received by the Administrator or by the State organic program.

- A decision to deny, suspend or revoke certification or accreditation will become final and non-appealable unless the decision is appealed in a timely manner.
- All written communications between parties involved in appeal proceedings must be sent to the recipient's place of business by a delivery service which provides dated return receipts or by some other medium that can be tracked.

8.2. Where and What to File

An applicant/certified operator may appeal a denial, proposed suspension or proposed revocation of certification by NOFA-NY Certified Organic LLC to the USDA Administrator, as specified in §205.681.

- Appeals to the Administrator must be filed in writing and addressed to USDA-AMS-Administrator c/o NOP Appeals Team 1400 Independence Ave., S.W., Room 2642, Stop 0268, Washington, D.C. 20250. An appeal may also be filed to the NOP Appeals Team at NOPAppeals@usda.gov
- Appeals to the State organic program must be filed in writing to the address and person identified in the letter of notification.

All appeals must include a copy of the adverse decision and 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.

8.3. Public Notification of Change of Certification Status

Changes in the certification status of certified operations will be posted on the Organic Integrity Database website only after all appeals have been concluded.

9. Complaint Policy and Procedures

Addressing complaints is an important component of operating a third-party certification organization. Complaints or allegations against a NOFA-NY Certified Organic LLC certified operation for violations of the USDA National Organic Program that have been witnessed, or evidence that producer is engaged in the application of a prohibited material, misleading or fraudulent labeling, commingling of conventional or organic products, or other violations of the standards, will be investigated in a timely manner.

Every NOFA-NY Certified Organic LLC producer has the right to a complete and fair investigation, as well as the right to appeal of a proposed suspension or revocation, or denial of certification.

While NOFA-NY Certified Organic LLC will make every effort (when requested) to keep complainant name confidential, NOFA-NY Certified Organic LLC cannot ensure that complainant identity would remain confidential in the event that NOFA-NY Certified Organic, LLC records were subpoenaed by a court of law or requested by subsequent county, state or federal investigators. Complainant is encouraged to fill out our Complaint Form to ensure accurate and complete documentation is received.

Complaints or criticisms regarding NOFA-NY Certified Organic, LLC or the certification program as a whole can be made to the USDA National Organic Program, the Associate Directors or Management Committee.

9.0. Complaints Procedures followed by NOFA-NY Certified Organic LLC

NOFA-NY Certified Organic LLC will investigate complaints of noncompliance with the NOP Regulations concerning production and handling operations certified as organic by us. Complaints related to the operations certified by our agency will be tracked electronically.

Records related to complaints regarding the operation of the NOFA-NY Certified Organic LLC Certification Program will be maintained in a Complaint File. We will acknowledge receipt of the complaint and document the action taken and its effectiveness.

We must notify the USDA Administrator if any complaints identify a noncompliance of the NOP Regulations.

9.1. Complaints Procedures for Certified Operations

We recommend that certified operations address and maintain a record of all complaints they receive about their products' compliance with the NOP Standards, including:

Responses to all complaints they receive about their products' compliance with the NOP Regulations.

Documentation of actions taken to correct the cause of all complaints they receive about their products' compliance with the NOP Regulations.