

# **NOFA-NY Certified Organic, LLC**

## **Policy Manual**



# NOFA-NY Certified Organic LLC Policy Manual – Version 6

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# NOFA-NY Certified Organic LLC Policy Manual

It is important that farmers, processors and consumers understand the process we use to certify farms and processing 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.

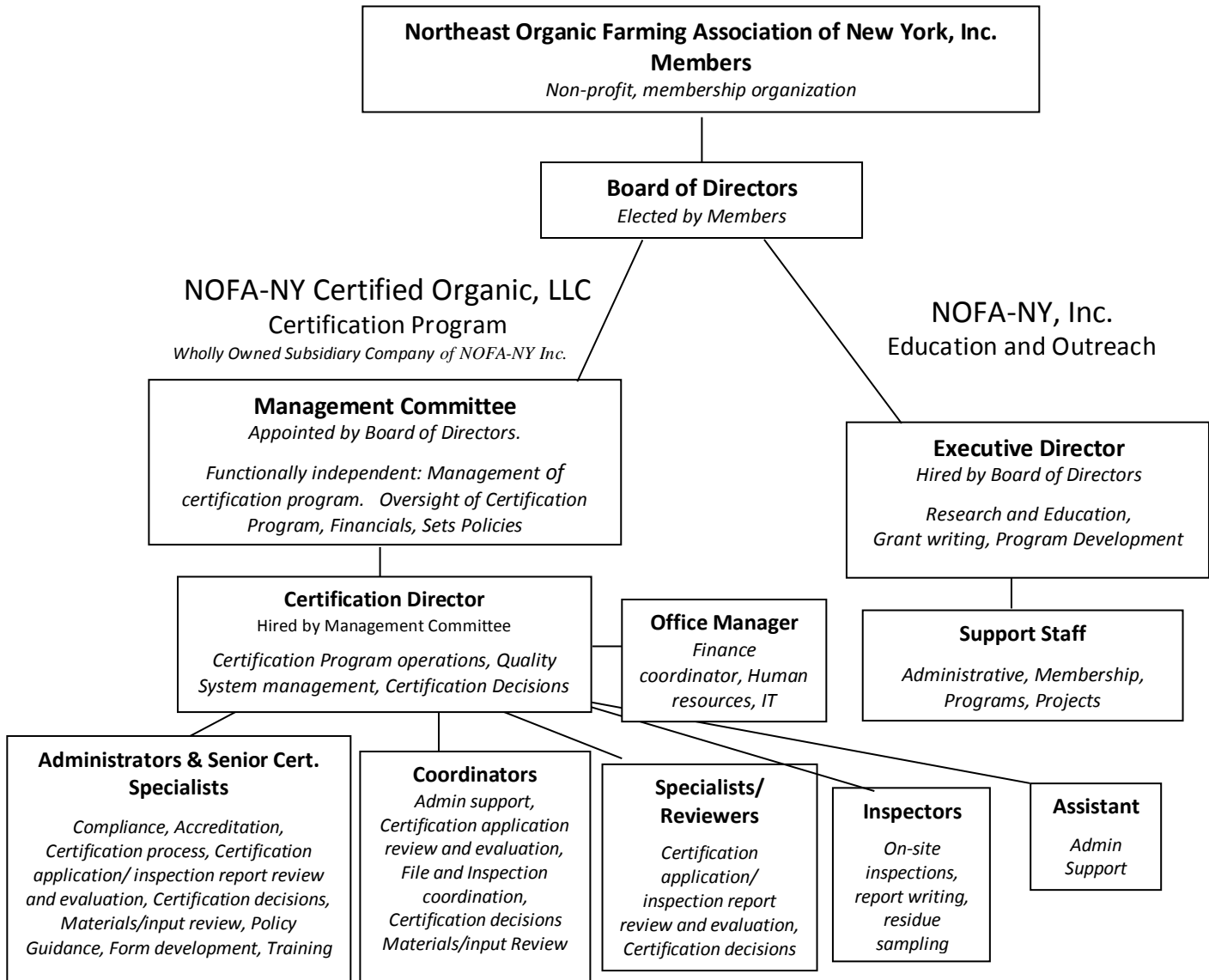
## 1. Organizational Structure, Authority, General Accreditation Policies, Administration

### 1.1. Legal Status

NOFA-NY Certified Organic 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 the Northeast Organic Farming Association of New York, Inc. (NOFA-NY). NOFA-NY is a non-profit, tax-exempt educational organization. NOFA-NY Certified Organic, LLC provides third party certification services, and is operated in the same non-profit manner as NOFA-NY, Inc. under the 501c (3) requirements.

### 1.2. Organizational Chart



### **1.3. Accreditation Status**

NOFA-NY Certified Organic LLC received accreditation from the USDA National Organic Program (NOP) as of April 29, 2002. To maintain our accreditation, we submit annual update information to the NOP, and undergo on-site audits by NOP representatives to verify our program'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.

### **1.4. Authority of the Management Committee**

A 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 between the Northeast Organic Farming Association of NY, Inc. and NOFA-NY Certified Organic LLC. The Management Committee sets policies for NOFA-NY Certified Organic LLC based upon NOP Regulations and recommendations from certification staff, contract reviewers and inspectors.

### **1.5. General Accreditation Policies**

#### **1.5.1. Confidentiality Policy**

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. No business-related information pertaining to clients, obtained during the certification process, can be disclosed to third parties (with the exception of the Secretary of the USDA or the applicable State officials or their authorized representatives) unless permitted in writing by the certified producer or handler. An annual declaration adhering to this policy will be required of all Management Committee members, staff, inspectors, and contract reviewers.

#### **1.5.2. Conflict of Interest Policy (§205.501(a) (11) (i-vi))**

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.

### **1.5.3. 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.

### **1.5.4. 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.

### **1.5.5. 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.

### **1.5.6. Submission of Information and Fees to USDA/NOP**

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

- NOFA-NY Certified Organic LLC will submit its annual update/report to the USDA/NOP on or before the anniversary of the date accreditation was granted.
- NOFA-NY Certified Organic LLC will submit its 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.
- NOFA-NY Certified Organic LLC will submit timely updates to our list of certified operations 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.
- Fees for accreditation will be paid and submitted to USDA/NOP.



### **1.5.7. 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.

\* A proposed suspension or proposed revocation of accreditation may be appealed to the Administrator. An appeal of a noncompliance decision will be filed within the time period provided in the letter of notification or within 30 days from receipt of the notification.

### **1.5.8. 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.

## **1.6. Program Administration**

### **1.6.1. 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 sets policies for NOFA-NY Certified Organic LLC, based upon the NOP Regulations and recommendations from staff, inspectors, and contract reviewers.

### **1.6.2. Certification Staff**

A Certification Director and other program staff are responsible for conducting the day to day work of NOFA-NY Certified Organic, LLC.

Inspectors, who are either employees or independent contractors, conduct the on-site inspections of farms and handling operations and submit inspection reports to the certification office.

Contract Reviewers are selected by the Certification Director and 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 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**

### **2.1. 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 included in a three-part manual with the NOFA-NY Certified Organic LLC Guidance and Policy Manuals, which is included in all application packets. Exempt and excluded operations may purchase the manuals so that they may fully comply with the NOP Regulations. Individual copies of the NOP Regulation, NOFA-NY Certified Guidance and Policy Manuals will be available on our website [www.nofany.org](http://www.nofany.org).

Changes to the NOP Regulations and/or NOFA-NY Certified Organic LLC Policy and Guidance Manuals (including in response to NOP Guidance and Instruction documents) will be sent as they occur to operations as separate pages

for insertion to the existing manuals and added to any remaining application packets for initial certification. The changes will also be included in the manuals for the next printing.

## 2.2. Organic Certification Categories

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

Crops (includes greenhouse, maple, mushroom, sprout production)

Livestock [includes dairy (cow, goat, sheep), poultry]

Handling

Wild Crops

## 2.3. 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 and export only to Taiwan.

Notification of Compliance Requirements:

- **Notifications received from the USDA's National Organic Program:** Will be reviewed by Certification Director and Certification Administrators (Senior Certification Specialist) to ensure timely training, compliance, and updates to Policy Manual.
- **Notifications to producers:** NOFA-NY Certified Organic LLC will notify its producers of the compliance requirements for each applicable export/import arrangement by letter or electronic mail with 14 days of notification by the NOP. Producers sign an Equivalency Arrangement Agreement Form confirming they will abide to critical variances, exclusions, product origin, and labeling requirements for specific foreign markets applicable to their operation.

**Compliance controls:** NOFA-NY Certified Organic LLC will ensure compliance with export/import arrangements through recordkeeping and inspections including residue testing (*refer to section 2.9*).

**Authorized Party:** The Certification Director 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 Handling Coordinator will act as an authorized back-up to ensure uninterrupted issuance of export certificates. The designated person(s) are responsible for all aspects of the issuance of the export certificate, including ensuring security of blank export certificates.

### 2.3.1. Equivalency Agreement between U. S. and Taiwan

**Export Arrangement:** This arrangement establishes the standards of the two countries with the exception of some critical variances that must be addressed in the certification and export process.

Critical Variances for Product Entering Taiwan

- NOP organic certified products containing at least 95% organic content and have their final processing occur in the U.S. may be exported to Taiwan.
- Products shipped to Taiwan must be produced "using zero prohibited substances". Livestock and meat products must be produced without the use of systemic pain killers or analgesics, including the use of Lidocaine and Procaine (though these materials may be used in topical applications).

### **2.3.1.1. Export Documentation**

Product entering Taiwan - A TM-11 Export certificate is required to ship NOP certified products. The export certificate must be reviewed and signed by an approved USDA-authorized certifier.

#### TM-11 Export Certificates

Identification Number: NOFA-NY Certified Organic LLC will assign a unique identification number to each export certificate issued that will begin with an acronym designating NOFA-NY Certified Organic LLC as the accredited certifying agency and the country code TW for the specific export arrangement stated above. Official country codes will be based on ISO 3166.

Identification Number Controls: NOFA-NY Certified Organic LLC will manage the assignment of export certificate numbers based on a spreadsheet listing available numbers assigned in chronological order by Country. This control log will also state disposition of export certificate to include those issued, voided or destroyed. The control log along with number assignment will be maintained by the Certification Director with backup responsibility by the Handling Coordinator.

#### Taiwan (TW) Export Certificate Requirements:

Verification of Export Requirement: NOFA-NY Certified Organic LLC will issue TM-11 Certificate only for products where the organic raw material content of the organic agriculture processed product is 95% or greater.

Compliance Statement Declaration: The export certificate will contain the following statement in the remark box declaring the applicable prohibitions:

For Processed Products and Crops: Organic agricultural products and organic processed products accompanied by this certificate were produced and processed using zero prohibited substances.

For Livestock and Meat products: Organic livestock products accompanied by this certificate, were managed and produced without the use of systemic pain killers or analgesics, including the use of Lidocaine or Procaine.

### **2.3.1.2. Labeling Requirements:**

Taiwan - For packaged retail products, labels or stickers must state the name of the USDA-authorized certifier and may use the USDA organic seal.

## **2.3.2. Equivalency Agreement between U. S. and Japan**

**Arrangement:** This arrangement establishes the standards of the two countries as equivalent, with the exception of some critical variances that must be addressed in the certification and/or import/export process.

#### Critical Variances for Product Entering Japan

- NOP organic certified plants (including fungi) and plant based processed products containing at least 95% organic content that are produced within the U.S., or have their final processing or packaging (including label) occur in the U.S. may be exported to Japan with no critical variances.

#### Critical Variances for Product Entering the United States

- Japanese Agricultural Standards (JAS) certified plants( including fungi) and plant based processed products that are produced or have had final processing or packing occur within Japan may be imported to the U.S. with no critical variances.

### **2.3.2.1. Documentation**

Product entering Japan -A TM-11 export certificate is required to ship NOP certified plants and plant based processed products to Japan under the Arrangement. The export certificate must be reviewed and signed by an approved USDA-authorized certifier. Organic products certified to the USDA organic regulations, but outside the scope of JAS, may also be imported to Japan. Examples include meats, dairy

products and alcoholic beverages. These products (with the exception of alcohol) do not require a TM-11 export certificate.

TM-11 Identification Number: NOFA-NY Certified Organic LLC will assign a unique identification number to each export certificate issued that will begin with an acronym designating NOFA-NY Certified Organic LLC as the accredited certifying agency and the country code JP for the specific export arrangement stated above. Official country codes will be based on ISO 3166.

TM-11 Identification Number Controls: NOFA-NY Certified Organic LLC will manage the assignment of export certificate numbers based on a spreadsheet listing available numbers assigned in chronological order by Country. This control log will also state disposition of export certificate to include those issued, voided or destroyed. The control log along with number assignment will be maintained by the Certification Director with backup responsibility by the Handling Coordinator.

#### Japan (JP) Export Certificate Requirements

Organic Agricultural Products and Processed Products: An Export Certificate will only be issued for organic plants including fungi or organic plant-based processed products.

Product entering U.S. -A NOP import certificate, completed by a JAS-authorized certifier is required to ship certified plants and plant-based products to the U.S. Organic products regulated by the JAS law may also be imported to the U.S. if they are certified to the USDA organic regulations. Examples include meats, dairy product, and alcoholic beverages. These products do not require an NOP import certificate

#### 2.3.2.2. Labeling Requirements:

Japan -Plant or plant-based processed products: For packaged retail products, labels or stickers must state the name of the USDA authorized certifier and may use the USDA organic seal. Products shipped from the United States and sold as organic in Japan are required to display the JAS seal. The seal may be applied in Japan by a JAS-certified importer or applied by U.S. companies through a consignment contract with a JAS-certified importer. Japan does not recognize the labeling category of 100% organic product. These products may be labeled "organic". Per export requirements, Japan does not have a "made with" labeling category. Only products with 95% or more organic content may be labeled as organic in Japan. Livestock and Alcohol products: These products cannot use the JAS Organic seal. Products may display the USDA organic seal if compliant with USDA organic labeling requirements. These products may be labeled with the work "organic" in English or Japanese.

United States - For packaged retailed products, labels or stickers must state the name of the JAS certifier and may use the USDA Organic seal and/or the Japanese Agricultural Standard (JAS) Organic seal

#### 2.3.3. Equivalency Agreement between U. S. and European Union (EU)

**Arrangement:** This arrangement establishes the standards of the two countries as equivalent, with the exception of some critical variances that must be addressed in the certification and/or import/export process.

##### Critical Variances for Product Entering the EU

- Produce crops without antibiotics.
- Meet additional specifications for wine.
- Products must be either produced or have had final processing or packaging occur within the U.S.

##### Critical Variances for Product Entering the United States

- Produce livestock without antibiotics.
- Aquatic animals are excluded products.
- Meet additional specification for wine.

- Product must be produced or have had final processing or packaging occur within the EU.

#### **2.3.3.1. Documentation**

Product entering the EU - Ship products with an EU import certificate submitted through the TRACES Network located at <https://webgate.ec.europa.eu/tracesnt/login>. NOFA-NY Certified Organic certifier number is US-ORG-036. NOFA-NY Certified Organic LLC will provide training documents for this electronic submittal upon request.

Product entering the U.S. - A NOP import certificate, completed by an EU-authorized certifier, is required to ship products to the U.S.

#### **2.3.3.2. Labeling requirements**

European Union -For packaged retail products, labels or stickers must state the name of the USDA-authorized certifier and may use the USDA Organic seal and/or the EU Organic logo.

United States -For packaged retail products, labels or stickers must state the name of the EU certifying agent and may use the USDA Organic Seal and/or the EU Organic logo.

### **2.3.4. Equivalency Agreement between U. S. and Switzerland**

**Arrangement:** This arrangement establishes the standards of the two countries as equivalent, with the exception of some critical variances that must be addressed in the certification and/or import/export process.

Critical variances for Product Entering the Switzerland

- Meet additional specifications for wine.
- Products must be either produced or have had final processing or packaging occur within the U.S.

Critical variances for Product Entering the United States

- Produce livestock without antibiotics.
- Meet additional specification for wine.
- Product must be produced or have had final processing or packaging occur within Switzerland.

#### **2.3.4.1. Documentation**

Product entering Switzerland - Ship products with a Swiss import certificate, reviewed and signed by a USDA-authorized certifier

Product entering the U.S. - A NOP import certificate, completed by a Swiss-authorized certifier, is required to ship products to the U.S.

#### **2.3.4.2. Labeling requirements**

Switzerland - For packaged retail products, labels or stickers must state the name of the USDA-authorized certifier and may use the USDA Organic seal.

United States -For packaged retail products, labels or stickers must state the name of the Swiss certifying agent and may use the USDA Organic Seal.

### **2.3.5. Equivalency Agreement between U. S. and Canada**

**Arrangement:** The arrangement establishes the standards of the two countries as equivalent, with the exception of some critical variances that must be addressed in the certification and/or import/export process.

Critical Variances for Product Entering Canada

- Products must be produced without the use of sodium nitrate (Chilean nitrate).

- Products must not be produced using hydroponic or aeroponic methods.
- Livestock products (other than from ruminants) must be from animal systems that meet the stocking rates as set forth in the Canadian Standard (CAN/CGSB 32.310-2006).

#### Critical Variances for Product Entering the United States

- Livestock products must be produced without antibiotics as attested by suppliers or supplier certifiers.
- Import ship with documentation that state, “Certified in compliance with the terms of the U.S.-Canada Organic Equivalency Arrangement”.

#### Exclusions to the U.S./Canada Equivalence Arrangement

- Products outside the scope of the Canadian Organic Regime, such as pet food, personal care products, and aquaculture products (nori, spirulina, chlorella, and kelp) may not be exported from the United States to Canada under this equivalence arrangement.
- NOP-certified products outside the scope of COR may be sold in Canada as NOP certified without additional verification. In these cases reference to COR is prohibited.

#### Product Origin

- Product from anywhere in the world certified to NOP standards may be shipped to Canada and use the Canadian Organic Logo as long as the critical variances and the arrangement terms are met.
- Product from anywhere in the world certified to the Canadian Organic standards may be shipped to the United States and use the USDA NOP logo as long as the critical variance and the arrangement terms are met.

##### **2.3.5.1. Documentation**

Attestation Statement must be included on accompanying documents or packaging for all shipments of organic products exported between Canada and the U.S.

##### **2.3.5.2. Labeling requirements**

###### Canadian labeling requirements

- For retail products, labels or stickers must state the name of the U.S. certifying agent and may use the USDA Organic seal and/or the Canada Organic Biologique logo.
- All product labels must be in English and French.
- Wholesale products only require lot numbers.

###### United States labeling requirements

- For retail products, labels or stickers must state the name of the Canadian certifying agent and may use the USDA Organic seal and/or the Canada Organic Biologique logo.

#### **2.3.6. Equivalency Agreement between U. S. and Korea**

**Arrangement:** This arrangement establishes the standards of the two countries as equivalent for processed products, as defined in the Korean Organic Food Code, with the exception of some critical variances that must be addressed in the certification and/or import/export process.

#### Critical Variances for Product Entering Korea

- Only processed products as defined in the Korean Food code (listed below) are covered under the agreement.  
“Processed food” refers to a food manufactured, processed and packaged by adding food or food additives to food raw materials (agricultural, forestry, livestock, or marine products), transforming food raw materials (such as grinding or cutting) till their original form cannot be recognized, or mixing such transformed ones or adding food or food additives to such mixture.

However, where, without the use of food additives or other materials, the agricultural, forestry, livestock, or marine products are simply cut, peeled, salted, ripened, or heated (except the cases where heating is performed for sterilization or heating causes significant changes to those products) till their original forms can be recognized or where sanitary risks from treatment processes are not expected and food raw materials are simply treated so as to allow organoleptic identification of food quality, such food products are excluded from the definition of the processed food.”

- NOP organic certified processed products containing at least 95% organic content and have their final processing (as defined in the Korean Food Code) occur in the U.S. may be exported to Korea.
- Products must not contain apples and pears produced with the use of antibiotics.
- The arrangement allows both countries to check imported organic products to verify that residues of prohibited substances and methods are not present in the final product. If such residues are detected in Korea, the organic label may need to be removed.

#### Critical Variances for Product Entering the United States

- Livestock products must be produced without the use of antibiotics.
- Products must contain at least 95% organic content and have their final processing or packaging occurs within Korea.

##### **2.3.6.1. Documentation**

Products entering Korea - ship with the NAQS Import Certificate of Organic Processed Foods reviewed and signed by a USDA-authorized certifier.

Product entering U.S. - A NOP import certificate, completed by a Korean-authorized certifier, is required to ship products to the U.S.

##### **2.3.6.2. Labeling requirements**

Korean labeling requirements -Products meet the organic labeling requirements as defined by Korea’s Ministry of Agriculture, Food and Rural Affairs (MAFRA).

Labels must include the following information:

“Manufactured by” -“Packaged in: USA” -The “Certified Organic By” statement

Telephone number of the seller or importer

Certificate number (which is the producer number found on the NOFA-NY Organic Certificate)

Labels may include the Korean Organic Food Label and/or USDA Organic Seal.

The word “organic” may be in English or Korean

United States labeling requirement - for packaged retail process products, labels or stickers must state the name of the Korean certifier and may use the USDA seal and/or the Korean Organic label.

## **2.4. Certification Annual Process**

Organic Certification is an annual process which requires:

Submission of a complete application (Organic System Plan) and payment of fees

Initial Review/evaluation of application

On-site inspection of farm and/or handling operation within 3 –10 months of receipt of a complete application.

Final Review/evaluation of application and inspection report

Certification Decision

#### **2.4.1. Obtain Current Application Packet**

Application packets can be obtained through the Certification Office or online at [www.nofany.org](http://www.nofany.org) for both initial and continuing certification. 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. Application packets for continuing certification will be provided by the Certification Office annually.

Crops\*/Livestock/Wild Crop/Handling: sent by January 1.

\*Update applications for Maple operations sent mid-November.

#### **2.4.2. Attend Workshop**

A certification workshop for initial Crop, Livestock and Wild Crop operations is generally held during the NOFA-NY Annual Conference in January each year. Additional workshops may also be available depending on participant interest, and may include workshops for Handling operations. Attendees will receive a \$25.00 voucher toward the initial certification fee, with a limit of one voucher per operation.

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 spent completing the paperwork.

#### **2.4.3. Submit Complete Organic System Plan with Payment (\$205.401(c))**

Application packets include the paperwork which will comprise the operation's Organic System Plan. All paperwork must be thoroughly completed in black or blue ink, or typed. 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) as long as 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 non-compliances identified in the notification of non-compliance, and evidence of such correction must be submitted.

Operations continuing certification must include any deviations from and/or changes made to the previous year's OSP, along with information regarding correction of noncompliances previously identified as required for continued certification, supported by documentation.

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, In order 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.

Applications must be postmarked or emailed as specified in the following sections for each certification category. Specific due dates are established annually to ensure they fall on a business day.



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.

#### **2.4.3.1. Crop, Livestock, Wild Crop Operations**

**Initial Certification.** Maple Applications are recommended to be submitted electronically or postmarked by the first business day in February. This will allow sufficient time to complete our initial review, perform the inspection during tapping, and make a final certification decision in time for your maple market season.

All other Initial Certification applications are recommended for submittal by the first business day in May. This will allow sufficient time to complete the certification process before harvest and before the USDA Cost Share Reimbursement deadline. Any application received after July 1 may become ineligible for reimbursement of first year certification fees under the USDA Cost Share Program requiring organic certification by September 30.

The initial certification process typically takes three months to complete from receipt of complete application with payment to receipt of certification decision. This period of time must allow for an in season inspection.

New applicants who submitted current year certification applications during the 4th quarter (October 1 and December 31) and pay a full Certification fee will be credited for a reduction in fees applied to their next year of certification. NOFA-NY will notify producers when applicable.

**Continuing Certification.** Maple OSP Annual Updates are to be submitted electronically or postmarked by January 15 (if this day falls on a weekend then the next business day allowed).

All other OSP Annual Updates are to be submitted electronically or postmarked by the last business day in February. Applications for initial certification submitted in the latter portion of the previous year are also subject to this due date.

OSP Annual Updates submitted electronically or postmarked after the date specified will be assessed a late fee as outlined in *Section 5.1.4 & 5.8* of this manual, and will be subject to Noncompliance Notification Procedures.

Operations that submit a complete OSP update with full payment are eligible for an Early Bird Discount.

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

**Expedited Certification.** Applications are typically processed within 30 days from receipt of complete application with payment including expedited fee to receipt of certification decision.

#### **2.4.3.2. Handling Operations**

**Initial Certification.** Applications for initial certification may be submitted at any time throughout the year. Any application received after July 1 may become ineligible for reimbursement of first year certification fees under the USDA Cost Share Program requiring organic certification by September 30.

The initial certification process typically takes three months to complete from receipt of complete application with payment to receipt of certification decision.

New applicants who submitted current year certification applications during the 4th quarter (October 1 and December 31) and pay a full Certification fee will be credited for a reduction in fees applied to their next year of certification. NOFA-NY will notify producers when applicable.

**Continuing Certification.** OSP Annual Updates are to be submitted electronically or postmarked by the last business day in February. Applications for initial certification submitted in the latter portion of the previous year are also subject to this due date or as advised in renewal application.

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

**Expedited Certification.** Applications are typically processed within 30 days from receipt of complete application with payment including expedited fee to receipt of certification decision.

#### **2.4.3.3. Producers switching to NOFA-NY from another certifier**

Producer to provide current certificate, last inspection report, and determination letter (DL). If response needed on DL, response should also be provided.

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

- Listing of field ID's and acreage certified
- Listing of animals certified
- Letter of good standing
- Any outstanding noncompliances

#### **2.4.4. 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 Review is conducted to evaluate whether or not the operation appears to be in compliance with the NOP Regulations and International Equivalency requirements. 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 will be assessed as outlined in *Section 5.8* of this manual, 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, **Noncompliance Notification Procedures will be initiated.**

#### **2.4.5. 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 actually saw and approved a particular document at the time of signing.

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

The act of signing warns or puts the signer on notice that he or she may be making a legally binding commitment. The signature will show that a meaningful act occurred when the person approved the document. A signature should force the person to deliberate over the document and become aware of its significance before making it final.

E-signatures will be allowed with the above intent. Each electronic and digital signature is unique to authorized representative and must not be used or shared by anyone else. Each electronic and digital

signature explicitly authenticates the employee executing the signature, and displays both the first and last name of the signer, and the time and date the electronic or digital signature was applied. The electronic and digital signature is considered invalid if the electronic record has been altered or modified after being signed. In addition, all regulations are applicable to e-records including retention, accessibility, confidentiality, and disposition requirements.

#### **2.4.6. On-site Inspection**

The inspector schedules the on-site inspection for initial certification, annual inspections for continuing certification, and any additional inspections that may be necessary. 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 on-site 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 12 months of receipt of a complete update application and fees.

Failure to complete an annual inspection is cause for the issuance of a notification of Noncompliance and/or Proposed Suspension. 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.

#### **2.4.7. 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, as applicable:

Additional information needed

Clarifications/Reminders

Conditions for Continuing Certification

Areas of Non-compliance

Conditions for Certification

#### **2.4.8. 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 new scope or product(s) 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 Organic under the US National Organic Program 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 in this part, 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.

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.

#### One 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.

#### One entity multiple locations

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 are the same for all locations, the organic certificate will list the additional location address at the bottom. 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 provide assistance in providing additional location certification fees and inspection quotes in Section 5.2.3.

### **2.4.9. International Trade Documents**

The certification office will issue an affirmations/affidavit/export certificates as applicable to verify existing international equivalency agreements. Up to ten affirmations/affidavits will be issued per year at no charge, with an additional fee of \$40 will be assessed for each affirmation/affidavit issued thereafter.

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.

Refer to *Section 2.3.* for International Equivalency Arrangements.

#### **2.4.10. 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 assessed a Certification Extension Fee as outlined in *Section 5.8* of this manual. Charges will continue to be incurred until an application or a written notice of surrender is received. This also applies to operations switching certifiers. Charges will be a prorated fee based on prior year certification fee.

#### **2.4.11. 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. Office staff or a Contract Reviewer will evaluate the documentation to verify compliance and determine whether or not 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.

#### **2.4.12. Material & Product Reviews**

All products and substances intended for use on NOFA NY, LLC certified farms are reviewed for compliance with Section 205.105 and Sections 205.600-604 (National List of Allowed and Prohibited Substances) of the National Organic Regulations. Review is performed by the Certification Program Administrators, Senior Certification Specialists, Materials & Inspection Coordinator, and Certification Coordinators. Refer to *Section 5.8* of this manual for fees associated with Material & Product Reviews.

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 and VOF will share a co-authored list of approved and prohibited materials. The list will include reviews conducted by both programs.

The premise of the National List of Allowed and Prohibited Substances is that all non-synthetic substances are allowed unless specifically prohibited in Sections 205.602 and 205.604 and all synthetic substances are prohibited unless specifically allowed in Sections 205.601 and 205.603. If a substance has an annotation for a specific use, it is allowed only as annotated. To determine if a substance is synthetic or non-synthetic, a decision tree, research and/or consultation with OMRI are utilized as needed.

##### **2.4.12.1. Fertilizers/Soil Amendments**

Synthetic ingredients including inert ingredients must be on the National List. Non-synthetic ingredients including inert ingredients must be verified as allowed per the National List. Any liquid fertilizers over 3% nitrogen must be OMRI listed or will be prohibited; as per NOP 5012, any liquid fertilizer with a higher than 3% nitrogen level must be reviewed, inspected and approved by a material review program. NOFA-NY does not inspect fertilizer manufacturing facilities.

##### **2.4.12.2. Pesticides**

Product must be labeled for use as a pesticide. Actives must be on the National List. Any inert ingredients must be on EPA List 4 (dated August 2004) – Inerts of Minimal Concern.

#### **2.4.12.3. Milk House Cleaning Products**

Most milk house cleaning products are followed by a rinse and do not have the potential to come in contact with the organic product. The only exception is the final sanitizer. For products that are not followed by a rinse, if the active ingredients are on the National List, the product is allowed without further review.

#### **2.4.12.4. Health Care Products**

All ingredients are reviewed. All active ingredients must be allowed per the National List, and any excipient (inactive) ingredients must be either GRAS (generally recognized as safe), allowed as a food additive by the FDA EAFUS List, or be part of a NADA (new animal drug application) per 205.603 (f).

#### **2.4.12.5. Teat Dips**

Currently reviewed as healthcare products. Active ingredient(s) must be allowed per the National List (iodine, chlorhexidine, hydrogen peroxide), and inactive (excipient) ingredients must be allowed per 205.603 (f). The NOP is supposed to be issuing guidance on how teat dips are to be classified, either as a health care product or non-food contact surface cleaning/sanitizing product.

#### **2.4.12.6. Vitamin/Mineral Formulations (injectable)**

Currently reviewed as healthcare products. If all active ingredients are FDA approved and/or AAFCO listed, they are allowed, provided that any excipient (inactive) ingredients are either GRAS (generally recognized as safe), on the FDA EAFUS list (Everything Allowed in Food in the US) or part of a NADA (new animal drug application) per 205.603 (f)..

#### **2.4.12.7. Vitamin/Mineral Formulations (feed supplements)**

All ingredients must be FDA approved and/or AAFCO listed. Agricultural products included as carriers must be certified organic. Formulations may not contain any prohibited substances.

#### **2.4.12.8. Proteinates**

Must obtain verification that they are not derived from excluded methods (GMOs) or slaughter-by-products.

#### **2.4.12.9. NOSB recommended substances**

NOFA-NY does not allow NOSB recommended substances until they are added to the National List.

#### **2.4.12.10. OMRI-listed, WSDA-listed, CDFA-listed and EPA Approved for Organic Use products**

We have a subcontracting agreement with OMRI, and consult with them as necessary. We are allowing OMRI-listed, WSDA-listed, CDFA-listed and EPA Approved for Organic Use products without further review, provided they are used as listed or as annotated in specific categories.

#### **2.4.12.11. NON-OMRI Listed, WSDA-listed, CDFA-listed or EPA Approved for Organic Use Products**

If not a liquid fertilizer that is over 3% nitrogen level, we will attempt to review the product in accordance with the National List. We require a complete ingredient listing and will sign a non-disclosure agreement if necessary. We utilize the generic OMRI list, the internet, AAFCO, EPA List and other reference sources. If all ingredients can not be determined to be compliant, the product will be listed as prohibited.

## **2.5. 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 (tracked in the Client Communications server file). Temporary variances will be documented as part of the final review summary and taken into account for all applicable certification decisions.

## **2.6. The National List: Sourcing Inputs and Ingredients**

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.

## **2.7. Withdrawal of Application / Surrender of Certification**

Operations that have submitted application for initial or continuing certification may withdraw their application at any time. A written request is required 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. Refer to *Section 5.4* for refund policy.

If the certification fee was not paid in full and the amount paid at the date of withdrawal is not sufficient to cover costs incurred at the time of 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 certification certificate to the certification office.

An operation that voluntarily withdraws an application or surrenders certification prior to the issuance of a Notice of Noncompliance will not be issued a notice of noncompliance.

An operation for initial certification that voluntarily withdraws its application prior to the issuance of a notice of certification denial will not be issued a notice of certification denial.

*Section 2.4.10* of this manual outlines fees associated with operations who do not submit an annual application by annual due date with the intent to surrender certification or switch certifiers.

## **2.8. Monitoring Continued Compliance**

Continued compliance of operations is monitored through complaint investigation, conducting unannounced on-site 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.

Noncompliance Procedures will be initiated, or continued as applicable.

## **2.9. Testing for Residues (§205.670)(a-d)**

Residue testing to monitor compliance will be conducted on a minimum of 5% of certified operations annually, pursuant to NOP Regulations. Samples may be collected during any on-site inspection, and may either be randomly selected or risk based.

### **2.9.1. 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.

### **2.9.2. 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.

### **2.9.3. 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. There shall be no charge to the inspector for samples taken. 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.

### **2.9.4. Results Analysis**

Results of analyses and tests performed under this section will be:

Sent to the inspected operation.

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.

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.

Promptly reported to the appropriate State health agency or foreign equivalent if test results exceed federal regulatory tolerances.

### **2.9.5. Conducting of Tests**

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

### **2.9.6. Exclusion from Organic Sale (§205.671)**

When residue testing detects prohibited substances at levels that are greater than five (5) percent of the Environmental Protection Agency's tolerance for the specific residue detected or unavailable residual environmental contamination, the agricultural product must not be sold, labeled, or represented as organically produced.



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.

## **2.10. 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 as a result 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.

### **2.10.1. 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 by direct mail/email. 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 outlined in *Section 2.4*; however the Organic Certificate described in *Section 2.4.8* 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.

### **3.1. 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.

### **3.2. Transition Monitoring - Dairy Herd**

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

#### **3.2.1. 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.

### **3.2.2. 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.

#### **3.2.2.1. 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 of the 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.

#### **3.2.2.2. 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.

## **4. The Inspection Process**

### **4.1. 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 the "eyes", and are the connecting link between the operation and the Certification Program. The individual conducting the inspection will 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 all 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 areas of non-compliance to the operator and the Certification Program.

- Completion of all inspection forms associated with the inspection, and returning the operation's file with the completed inspection report to the Certification office within 14 days of the inspection visit.

### **4.2. 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, and may raise objections based on conflicts of interest or other reasons by submitting the objections, in writing, to NOFA-NY Certified Organic LLC, who rules whether the reasons are accepted and whether or not to reassign the inspection.

### **4.3. Inspection Scheduling**

The Inspector is responsible for scheduling and completing all inspection visits. Inspections will be grouped by geographical areas whenever possible to minimize inspection travel costs. Inspections for initial applications will 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 lengths of on-site inspections vary depending on the size and complexity of the operation.

#### 4.4. Inspection Cancellation

Cancellation of an inspection appointment is very costly to the Certification Program. Producers should keep in mind that the inspector is likely working with other operations in their region when planning the inspection schedule. Cancellation of one inspection affects the other inspection appointments as well.

Scheduled on-site inspections may be cancelled up to one week prior to the appointment without penalty. Inspections cancelled 6 days or less from scheduled date will result in producer being billed for a cancelled inspection. Additionally, a producer not present at time of inspection that results in a cancellation will be responsible for actual cost of cancelled inspection.

Handling operations are billed for all costs incurred by the inspector for the canceled appointment, as well as the costs of the re-scheduled inspection.

#### 4.5. Annual On-Site Inspection

##### 4.5.1. Documentation Provided to Inspector

The Certification Program office provides the OSP and Inspection Letter to the Inspector for all operations, as well as the previous year's inspection report for continuing operations.

##### 4.5.2. 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. 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.

Initial discussion with the operator regarding the process to be used to complete the inspection.

Explanation to the applicant that the inspector is only an observer, and does not make the final certification decision.

Field tissues, ingredient, finished product, pest management samples may be collected for testing.

Observation and review of production practices and audit trail documentation.

- Equipment being used by the operation.
- Input materials and 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). Refer to *Section 4.8* for more detail.
- In/Out Balancing.

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 applicant.
- A receipt for any tissue or product samples pulled. Samples must be provided to the inspector at no charge.

##### 4.5.3. Inspection: Crop Operations

(In addition to *Section 4.5.2* above)

Inspection of all fields for which the operator is requesting certification or continuing certification Processing areas (if applicable).

Crop/product storage areas.

All audit trail records (field amendment records, pest and disease control applications, purchases, equipment cleanout, harvest, storage, labels, adequacy of lot numbering system).

#### **4.5.4. Inspection: Livestock Operations**

(In addition to *Section 4.5.2* and all areas in *Section 4.5.3* above)  
Livestock housing areas and conditions.

Animal identification system.

Health remedies, medications and cleaning materials on hand.

Feed supplies on hand.

Milk handling practices, including cleaning materials.

Slaughter facility.

Poultry house areas and conditions; including outdoor access and adjoining land.

Livestock audit trail records (purchased feed logs, organic certificates for purchased feed, livestock medication, pasture records for ruminants, breeding, chicks or pullets shipping documents hatching, loss and cull, egg production).

#### **4.5.5. Inspection: Handling Operations**

(In addition to *Section 4.5.2* above)  
All production areas.

Equipment.

Cleaning and sanitation logs.

Review of certification verification for ingredients.

Review of processing aids used, certification verification or allowance.

Review of product storage areas including (in-process storage areas, packaging, finished product storage, shipping areas).

Review of pest control practices.

All audit trail records (ingredients – purchase, organic certificates, non-organic compliance (not produced with genetically modified organisms, irradiation, sewage sludge); storage, production, pest control logs, cleaning/sanitizing logs, inventory, adequacy of lot numbering system, sales/shipping).

#### **4.5.6. Inspection: Wild Crop Operations**

(In addition to *Section 4.5.2* and all areas of *4.5.3* above)

Inspection of designated wild cropping areas for which the operator is requesting certification or continuing certification.

Verification of species harvested.

Management, harvest and monitoring practices - protection of natural resources, rare species.

Training of harvesters.

### **4.6. Additional Inspection**

Additional inspection 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. Crop/Livestock operations that also certify Maple production, for example, will require an inspection of Maple production in winter, and a separate inspection of Crop/Livestock production during the growing season.

To verify actions taken to correct noncompliance(s).

If the applicant cancels the scheduled inspection visit within one week of a scheduled inspection.

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. Refer to *Section 5.2.3* for fees.

#### **4.7. Unannounced Inspection**

A minimum of 5% of certified operations will have unannounced inspections each year. Operation to be inspected can be risk based or randomly selected by the certification office. Unannounced inspections may be conducted on an entire operation or be limited in scope with pre-determined areas for review and observation.

The Inspector will 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 will complete the Unannounced Inspection Report and the Exit Interview form.

The operation is not charged fees for unannounced inspection unless otherwise notified. Reasons for NOFA-NY charging a producer may include, but are not limited to: inspection identified areas of noncompliance; verification of corrective actions; observations of specific production stages such as planting, weeding, harvesting, cleaning, packaging, etc.; a history of previous noncompliances; complaint or other investigation; or other reasons deemed appropriate by NOFA-NY.

#### **4.8. Inspection Audit Procedures**

Audit trail review is essential to the inspection process to ensure organic integrity and prevent fraud such as substituting ingredients and selling conventional products as organic.

The NOP Program Handbook Guidance 2601 states the inspection includes, 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, Compliance Notification Procedures will be initiated. An additional inspection visit may be necessary to verify correction of a 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.

#### **4.8.1. Crop**

##### **4.8.1.1. Audit Trail/Trace-back**

Inspectors are required to verify if the record keeping system provides the information necessary to determine where organic product was grown/originated.

##### **4.8.1.2. In/Out or Mass Balance**

Production yields, available certified acreage, sales;and seed, seedling or transplant balances are compared to verify whether the certified acreage could yield the amount of organic product sold, based on regional averages maintained by government extension agents, input suppliers, crop advisors, buyers, crop insurance providers, other producers, and inspectors who have inspected similar crops in the region.

Discrepancies between the yield, available certified acreage and sales need to be clarified at the time of inspection. The operator should clarify whether crops from additional fields were included in the total harvest, whether certified crops were bought in and resold, etc.

#### **4.8.2. Livestock Operation**

##### **4.8.2.1. Audit Trail/Trace-back**

Audit trail review will be conducted on the crop portion of a livestock operation, as described in above Crop Operation. In addition, review of livestock records will be conducted, including purchase and sale of animals and certified feed, herd health, animal tracking/identification, egg collection, milk pick-up and quality reports, pasture and outdoor access.

##### **4.8.2.2. In/Out or Mass Balance**

Herd size and production levels are compared to determine if production matches level of available feed, pasturing practices, etc.

#### **4.8.3. Handling Operation**

##### **4.8.3.1. Audit Trail/Trace-back**

A review of audit trail documentation is required to verify the flow of products and production, the record keeping system traces finished products back to the ingredient source(s), and that the formulation used is as described in the OSP. Inspectors do not perform a review of the audit trail based upon a lot number selected by the applicant. The Inspector will select a finished product lot number and will request all production records including formulation, processing, sales, outgoing bills of lading, warehouse, production reports, ingredient inventory, receiving logs, incoming bills of lading, ingredient purchase and organic verification documents including import records when applicable. Copies of audit trail documents will be included with the inspection report if any deficiencies are found.

Minor deficiencies in the audit trail system will be identified and included in the inspection report, as well as a description of changes the operator indicates they intend to make to correct those deficiencies.

##### **4.8.3.2. In/Out or Mass Balance**

Production records for a specified time period will be reviewed and compared to verify that sufficient quantities of ingredients have been purchased to produce the quantity of finished product produced and/or sold. Records may include weights and origin of incoming ingredients, production records, beginning and ending inventories, ingredients in storage, product in process, finished products in storage, sales/shipping records including imports when applicable.

Discrepancies in the In/Out Balancing Audit will be noted in the inspection report.

#### **4.8.4. Wild Crop**

Records related to species and amounts harvested will be reviewed to verify practices are as described in the OSP and are sustainable. Audit Trail/Trace-back & In/out or Mass Balance should be performed as applicable.

#### **4.9. Collecting Analytical Samples during an Inspection**

Samples of soil, crops, ingredients, and finished products may be collected for testing. Sample collection will follow standardized protocols. Samples must be properly collected, handled, stored, and transported. Sample Collection Logs and Chain of Custody forms are used to document collection, handling, storage, and transport activities. Analytical test results may be used in a court of law. Improper collection and handling of samples invalidates test results.

Inspectors collecting samples must be trained in proper sample collection techniques and procedures. The specific sampling techniques and procedures used are dependent upon the requirements for the type of testing to be conducted.

### **5. Fees and Financial Policies and Procedures**

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

#### **5.1. Certification Fees**

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

If a written request with supporting documentation for any deviation from the existing fee structure is submitted with an Annual Update application, it will be forwarded to the Management Committee for review. Decisions related to such requests will be made by the Management Committee within 90 days.

##### **5.1.1. Certification Application Packet Fee**

The Certification Application Packet includes: the USDA National Organic Program Regulations, NOFA-NY Certified Organic, LLC Guidance and Policy Manuals, the application booklet 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. Fees are:

Certification Application Packet: \$50.00

NOP Regulations/LLC Guidance/Policy Manuals: \$20.00

Electronic versions are available free of charge via our website [www.nofany.org](http://www.nofany.org).

##### **5.1.2. New Applicant Fees**

An additional one-time new applicant fee of \$75.00 is also required. An existing producer adding a location does not pay a new applicant fee.

##### **5.1.3. Early Bird Discount - \$50.00 or \$25.00**

To be eligible for an Early Bird discount, a complete annual update application with full payment of certification fees must be postmarked or emailed by the applicable early bird deadlines specified on the Fee Determination Form. Check post-dated after deadline do not qualify for this discount.

##### **5.1.4. Late Application Fees**

For the Certification Program to run efficiently, applications for initial and continuing certification must be submitted by the due dates established for each certification category.

Initial Certification – Applications may be submitted throughout the year. No late application fee applies. Refer to *Section 2.4.3* for submittal recommendation date to qualify for Cost Share Reimbursement.

Continuing Certification - Annual Update applications submitted after the due date established in the application packet will be charged a late fee of \$150. This fee does not qualify for Cost Share Reimbursement.

#### **5.1.5. Split Payment Option**

At least 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. NOFA-NY Certified Organic Office Manager has the right to approve additional payment plan installment agreements. As outlined in *Section 5.8* a Payment Plan Installment Fee of \$10 per installment payment will be applied for any operation electing to pay certification fees in installments over and above split payment

The Certification Program reserves the right to deny the Split Payment Option to operations with a poor payment history for two or more years. Applications received from operations with poor payment history will not be processed until the full fee is received and cleared. Poor payment history includes failure to pay any required fees by the applicable due date, and/or having checks returned unpaid. The option of split payment is not available after July 1<sup>st</sup>.

If any portion of the annual certification fee remains unpaid after August 1, a notice of Noncompliance will be issued and an additional billing fee will be assessed. If the fee is not paid to correct the noncompliance, a Notice of Proposed Suspension or Denial of Certification will be issued.

#### **5.1.6. Certification Fees: 2.Crop, Livestock, Wild Crop Operations**

Fees are set on a sliding scale, based upon the gross organic sales from certifiable fields, sugar bushes, livestock, wild harvest and handling facilities of the operation as noted below. 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 \$7000 excluding additional fees.

Fees for initial certification are based upon the first year's projected gross organic sales. Fees for continuing certification are based upon the previous year's actual gross organic sales.

Sales documentation must satisfy the NOFA-NY Certified Organic, LLC and inspector and all such information will be kept confidential. Operations that cannot 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.



### Annual Certification Fee Chart

Gross Organic Sales		Certification Fee		
From	To	Crop	Crop & Livestock	Adding Handling (On/Off Farm processing)
\$0	\$15,000	\$625	\$650	+\$50
\$15,001	\$25,000	\$675	\$700	+\$50
\$25,001	\$35,000	\$725	\$750	+\$50
\$35,001	\$50,000	\$825	\$850	+\$50
\$50,001	\$65,000	\$925	\$950	+\$50
\$65,001	\$80,000	\$1,025	\$1,050	+\$50
\$80,001	\$100,000	\$1,125	\$1,150	+\$50
\$100,001	\$125,000	\$1,225	\$1,250	+\$50
\$125,001	\$150,000	\$1,325	\$1,350	+\$50
\$150,001	\$175,000	\$1,425	\$1,450	+\$50
\$175,001	\$200,000	\$1,525	\$1,550	+\$50
\$200,001	\$225,000	\$1,625	\$1,650	+\$50
\$225,001	\$250,000	\$1,825	\$1,850	+\$50
\$250,001	\$300,000	\$1,975	\$2,000	+\$50
\$300,001	\$400,000	\$2,125	\$2,150	+\$50
\$400,001	\$500,000	\$2,275	\$2,300	+\$50
\$500,001	\$600,000	\$2,450	\$2,475	+\$50
\$600,001	\$700,000	\$2,700	\$2,725	+\$50
\$700,001	\$800,000	\$2,950	\$2,975	+\$50
\$800,001	\$900,000	\$3,200	\$3,225	+\$50
\$900,001	\$1,000,000	\$3,450	\$3,475	+\$50
\$1,000,001	\$1,500,000	\$4,200	\$4,225	+\$50
\$1,500,001	\$2,000,000	\$5,450	\$5,475	+\$50
\$2,000,001	or more	\$7,000	\$7,000	+\$0

Additional fees will be assessed for changes or additions to certification as outlined in *Section 5.8*.

**5.1.6.1. Transitioning Monitoring Fees – Land**

Transition Monitoring Fee \$100.00 per year in transition

Inspection Deposit \$300.00 per year in transition

*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.*

**5.1.6.2. 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 will pay the certification fee plus the Transition Monitoring fee.
- If the operation’s land is in its third year of transition, the operation will pay the fee for Transition Monitoring for Land plus the Dairy Transition Monitoring fee.

Actual cost of additional inspection if necessary prior to end of transition.

**5.1.7. Certification Fees: Handling Operations**

Handling Operations are required to submit a Base Certification Fee, Inspection Fee Deposit, and Sales Assessment Fee with their application for initial or continuing certification.

Fees for handling operations are calculated as follows:

- Certification base fee of \$300.00
- Minimum Inspection deposit of \$350.00 or you may elect to pay a deposit for the average inspection cost of \$600

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.

- Sales Assessment: (Minimum Assessment allowed is \$200 and Maximum amount is \$10,00)

Initial Certification –Calculation of ½ of 1% (0.005) of estimated gross organic sales from certificate date to end of current calendar year. Average time from receipt of completed application to certificate issuance is approximately 3 months.

Continuing Certification (renewal) – Calculation of ½ of 1% (0.005) of last calendar year (Jan-Dec) gross organic sales of products and/or services

Livestock Auction Barns are exempt from paying a sales assessment fee.

Distribution Operations will not pay the Sales Assessment of ½ of 1% (.005) of prior year’s gross organic sales. Instead they will pay per the following chart based on the number of organic skus being certified.

# of SKUs	To	Fee amount	# of SKUs	To	Fee amount
1	500	\$300	15,001	20,000	\$5,000
501	1,000	\$625	20,001	25,000	\$6,250
1001	5,000	\$1,250	25,001	30,000	\$7,500
5,001	10,000	\$2,500	30,001	35,000	\$8,750
10,001	15,000	\$3,750	35,001	over	\$10,000

Additional fees will be assessed for changes or additions to certification as outlined in *Section 5.8*.

**5.2. Inspection Fees**

**5.2.1. Crop, Livestock and Wild Crop Operations**

Annual certification fees listed in *Section 5.1.6* include the cost of one inspection visit. The operation will be billed for the actual cost of any additional or unannounced inspections as applicable, including inspection

cancellations as outlined in *Section 4.4 & 5.2.5* of this manual. Additional inspection is required for Crop, Dairy or Livestock operations adding maple production. Operations with additional location(s) may also incur an additional inspection cost.

### **5.2.2. Handling 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 or credit will be billed once inspection has occurred.

### **5.2.3. Additional Inspection/Review Fees**

An additional inspection fee will be charged for any applicant who requires additional work by the Certification Review Staff or Certification Inspector. Conditions that may require an additional fee are as follows: a repeat inspection to gather new information or to inspect another part of the operation; an additional audit trail review of a farm or processing application; out of state travel; additional location; or inspection of a farmer/processor whose facilities are in different locations.

The minimum fees are:

Additional Inspection -\$150 plus \$25/hr. travel plus mileage (at current federal rate).

Additional Review by Certification Staff -\$50/hr

### **5.2.4. Unannounced Inspection Fees**

If major noncompliances (noncompliances that affect the integrity of the organic product) or situations requiring further investigation are identified during an unannounced inspection, the applicant will be billed all direct costs for the unannounced inspection.

The applicant will be billed for all direct costs for unannounced inspections related to compliance actions or investigations of complaints that results in a noncompliance, including those needed to verify compliance when considering reinstatement of a certification that has been suspended.

### **5.2.5. Inspection Cancellation**

On-site inspection cancelled six (6) days or less from scheduled date will result in producer being billed for actual cost of cancelled inspection. Additionally, a producer not present at time of inspection that results in a cancellation will be responsible for actual cost of cancelled inspection.

## **5.3. Grass Fed Certification Fee**

\$100 per year (plus additional inspection if not included with annual inspection) Optional additional certification that is open to all ruminant livestock operations and handlers of ruminant livestock products who are currently certified organic by NOFA-NY Certified Organic, LLC.

## **5.4. Refund Policy - Certification or Transition Monitoring**

An operation that has been denied certification or transition, or has submitted a written request (prior to on-site inspection, to either withdraw their application for, or surrender certification) will receive a refund of 50% of certification fees prior to inspection. Once inspection has occurred no refund will be allowed.

See *Section 2.7* of this manual for withdrawal procedures and requirements.

## **5.5. 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 Compliance Notification Procedures defined in *Section 7.2*.

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

### **5.6. Complaint, Investigation & Adverse Action Fee**

Applicants and certified operations are responsible for reimbursing NOFA-NY for all costs incurred by NOFA-NY as a result of adverse actions, investigations, and legal issues involving the applicant or certified operation. Adverse actions may include but are not limited to: actions described in *Section 7.2*, including 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. Costs are billed at \$50/hour. NOFA-NY does not bill for pesticide residue testing.

When a formal mediation is necessary to resolve a non-administrative proposed adverse action, the cost of mediation will be split between NOFA-NY and the operation. However, if NOFA-NY prevails in a mediation, dispute, proceeding, or other contested action against the applicant or certified operation, the applicant, certified operation is responsible for paying all costs incurred by NOFA-NY including NOFA-NY reasonable attorneys' fees, expenses and costs.

### **5.7. 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/>, or may be purchased from us for \$5.00. A list of certified operations for any one of the previous three years may be purchased for \$10.00. A fee will be charged for other public information requested, based on the office time necessary to retrieve and copy the information from our files.

### **5.8. 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.

**\* Before additional fee title indicates fees that are not part of the cost share reimbursement program.**

**Expedited Application:** \$1000 additional fee for top priority application processing. Locations outside of New York State may also incur added inspection fees.

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. Typical certification decision is received within 30 days of receipt of completed application. This service does not mean a certification decision will be favorable.

A completed Expedited Service Request form signed by the operator must be submitted with payment of the base fee.

**\*Incomplete Application:** \$35.00 fee will be charged for incomplete application received. Special allowances will be made for first time applications.

**\*Late Payment Fee:** \$30 will be charged for payment fees postmarked or submitted electronically after due date including split payment dates agreed upon. **All certification fees should be paid in full by August 1<sup>st</sup>.**

**\*Payment Plan Installment Fee:** \$10 per installment payment covering additional administration cost for operations electing to pay certification fees in installment. Not applicable to split payment option.

**\*No Response Fee:** \$30 will be charged for failure to respond to request by deadline (E.g. failure to respond to determination letters by due date).

**\*Reinstatement Request Fee:** \$200.00 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). Producer will also be responsible for any past due balance from prior certification periods.

**Certification Extension Fee:** Monthly fee prorated from prior year certification fees for applications not submitted or surrendered within 45 days of application due date. Charges will continue to be incurred until an application or a written notice of surrender is received.

**Handling Scope Fee:** \$50 per year for Crop and/or Livestock operations who are seeking or have a handling scope certification.

**Administrative fee:** \$50.00/hour (*15 minute minimum = \$12.50*) for any service not otherwise specified.

#### **Changes & Additions:**

**Additional Inspection Fee:** \$150 deposit plus \$25/hour travel & Mileage

**Additional Review Fee** (outside of annual review): \$50/hour – review of new fields, animals, materials/products, new recipes, process, labels, product files, certificate, etc.

**\*Copies:** \$0.15 per page plus postage charge will be incurred for copies of application forms and/or inspection paperwork.

**\*Returned Check:** \$25 plus bank fee for each time a check is returned as unpaid, for any reason. A returned check will disqualify operation from receiving any discounts such as early bird.

**International Equivalency Affirmation/Affidavit/Export Certificates:** \$40.00 each (*ten included in annual certification fee*)

*NOFA-NY Certified Organic, LLC Certification Director reserves the right to waive any fee due to an extenuating circumstance.*

## **6. Rights, Responsibilities and Obligations**

### **6.1. Certified Operations**

#### **6.1.1. Complying with Certification Requirements**

Organic certification is a voluntary third party verification process. By requesting initial or continuing certification, operators are agreeing to comply with all requirements of the NOP Regulations. Operators must sign the Applicant Affirmation statement of agreement contained in the certification application.

#### **6.1.2. Make Available all Necessary Components for Evaluation**

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

#### **6.1.3. Make Appropriate Certification Claims**

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

#### **6.1.4. 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.

#### **6.1.5. 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.

#### **6.1.6. Limit the Certification Claim**

Certified organic products must only be represented as certified in compliance with the NOP Regulations.

#### **6.1.7. 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.

#### **6.1.8. 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.

#### **6.1.9. 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.

### **6.2. NOFA-NY Certified Organic LLC**

#### **6.2.1. 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 our website or at 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.

#### **6.2.2. 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.

#### **6.2.3. 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 NOFA-NY website.

#### **6.2.4. Notification of Changes**

##### **6.2.4.1. NOP Regulations**

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

##### **6.2.4.2. 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 upon approval.

### **6.3. Certified Operations & NOFA-NY Certified Organic LLC**

#### **6.3.1. 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:

- 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 producers, inspectors & staff members are responsible for adhering to the above code of conduct by showing mutual respect at all times.

### **7. 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 take action accordingly if they do not comply. Noncompliance procedures outlined in the NOP Regulations will be followed.

## 7.1. 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.

## 7.2. 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.

### 7.2.1. 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.

#### 7.2.1.1. Response from Operation

Upon receipt of notification of noncompliance, the operation may:

- Correct non-compliances and submit a description of the corrective actions taken with supporting documentation to the certification office.
- Correct non-compliances 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 response by due date stated will result in a no response fee. Refer to *Section 5.8*.

### 7.2.2. Resolution of Non-Compliance (§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.

### **7.2.3. 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
- The right to request mediation pursuant to Section §205.663 or to file an appeal according to Section §205.681.

### **7.2.4. 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 Notification of Proposed Suspension or Revocation of certification for the entire operation or a portion of the operation, as applicable to the noncompliance.

### **7.2.5. 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 non-compliance, 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.

### **7.2.6. 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.

#### **7.2.6.1. 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, care of the NOP requested certification reinstatement. Send the letter through the certifying agent, or directly to the NOP at: USDA, AMS, National Organic Program 1400 Independence Avenue, SW Room 2648, Stop 0268 Washington, DC 20250 or via email to [AIAInBox@ams.usda.gov](mailto:AIAInBox@ams.usda.gov).
- Retain copies of all documentation for future audit by the certifying agent and NOP.

#### **7.2.6.2. 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. In order 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.

#### **7.2.6.3. NOP Evaluation of Reinstatement Request**

Once the NOP receives a reinstatement request, it should 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.

#### **7.2.7. 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 according to *Section 7.2.1.1*.
- Request mediation according to *Section 8*.
- File an appeal of the denial of certification According to *Section 9*, which parallels the NOP Regulations.

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 non-compliances 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.

Notwithstanding 7.2.4 of this section, 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.

#### **7.2.8. Notification to Applicants/Certified Operations**

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

#### **7.2.9. Notification of USDA AMS Administrator**

NOFA-NY Certified Organic LLC will submit to the Administrator or the representative to whom authority has been delegated to act in the stead of the Administrator, a copy of any notice of denial of certification issued according to *Section 6*, notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation simultaneously with its issuance (as required by National Organic Program Standards §205.501(a)(15).

### **8. Mediation (§205.663)**

All operations applying for initial or continuing certification who disagree with a certification decision 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 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 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.

#### **8.1. 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.

#### **8.2. 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.

#### **8.3. 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. No cost to operations for this type of mediation. Mediation can be as simple as offering a 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, the cost of mediation will be split between NOFA-NY and the operation. However, if NOFA-NY prevails in a mediation, dispute, proceeding, or other contested action against the applicant or certified operation, the applicant, certified operation is responsible for paying all costs incurred by NOFA-NY including NOFA-NY reasonable attorneys' fees, expenses and costs.

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

#### **8.4. 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.

#### **8.5. 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.

#### **8.6. 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.

### **9. Appeal (§205.681 Appeals)**

#### **9.1. 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.

#### **9.2. 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.

### **9.3. 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 Avenue SW Room 2642-South, STOP 0268 Washington, DC 20250-0268. An appeal may also be file to the NOP Appeals Team at NOPAppeals@ams.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.

### **9.4. Public Notification of Change of Certification Status**

Changes in the certification status of certified operations will be posted on the NOFA NY website only after any and all appeals have been concluded.

## **10. 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 and review of complaint, 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.

### **10.1. 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 through a computerized database, and copies of written complaints will be placed in the operation's file.

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.

## **10.2. 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.