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**2023**

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# What to Do When Things Go Wrong with Your Organic Certifier?

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*For informational purposes only and not intended to be legal advice.*

Organic farmers and processing facilities are likely well familiar with their third-party organic certifier. Farmers share all sorts of information with their certifiers—what they grow and how they grow it. The certifying agents visit the farm to inspect the operations and production methods to maintain compliance with the standards required to get that “USDA Organic” designation. Often these relationships are professional and amiable; however, what happens when something goes wrong? A suspension, or worse, a revocation, of your organic certification can be devastating to your business. This article provides some helpful tips if your business finds itself at odds with your certifier.

The Organic Foods Production Act, created by the National Organic Program (NOP) and enforced by the USDA’s Agricultural Marketing Service, gives third-party certifying agents responsibility for certification and decertification of organic status.<sup>1</sup> The Act’s implementing regulations set out the procedures for accredited third-party certifying agents to investigate certified organic operations for non-

compliance and, if noncompliance is found, the process for certifying agents to suspend or revoke an operation’s organic status.<sup>2</sup>

## What are certifying agents required to do when there is alleged noncompliance with organic requirements?

The USDA’s regulations require certifying agents to give organic farms opportunities to address issues of noncompliance before they suspend or revoke the certification. The certifier must send the following written notifications to the recipient’s place of business *before* suspension or revocation can occur: (1) a notice of noncompliance; then (2) a notice of proposed suspension or revocation.<sup>3</sup>

The first notice describes each alleged noncompliance, the facts that the notice is based on, and a date by which the farmer has to rebut or correct each noncompliance.<sup>4</sup> If the issue is not resolved at this point, then the second notice—a notice of proposed suspension or revocation—will be sent. That notice will give reasons for the proposed



suspension or revocation and a proposed effective date of the action. Importantly, it will also include the impact on future eligibility and the right to mediate or file an appeal.<sup>5</sup>

The last strike—a final notice of suspension or revocation—states the certified operation failed to correct the noncompliance or resolve the issue through the available recourse steps provided to them.

Typically, these notices are sent over a period of weeks or even months. If correcting the noncompliance is not possible, a certifier can send the notice of noncompliance at the same time as the notification of proposed suspension or revocation.<sup>6</sup>

### What if your organic certification is suspended or revoked?

If your organic certification is suspended or revoked, the USDA must approve reinstatement upon a request for reinstatement of its certification. The third-party certifier (either your previous certifier or a different certifier) must verify that the underlying issues were addressed. The reinstatement process is challenging and not guaranteed. Additionally, no products can be marketed or sold with the organic certification label until reinstatement.

### What should you do to prevent suspension or revocation?

Rest assured if you are on the receiving end of one of these notifications, there are a few steps that you can take to prevent suspension or revocation of your organic certification:

1. **Read the notice of noncompliance carefully.**

Take the notice of noncompliance seriously. If there are multiple areas of concern, address each individually. These issues can often be rectified swiftly through corrective action or communication with your certifying agent before you ever get a notice of proposed suspension or revocation.

2. **Mark down the deadlines.**

The regulations require that certifying bodies provide dates on each notification to allow for a response. This is intended to provide a certified operation due process to rebut or correct the noncompliance or formally appeal the proposed suspension or revocation. Follow these dates! It is much simpler to correct noncompliance than be reinstated after suspension or revocation.

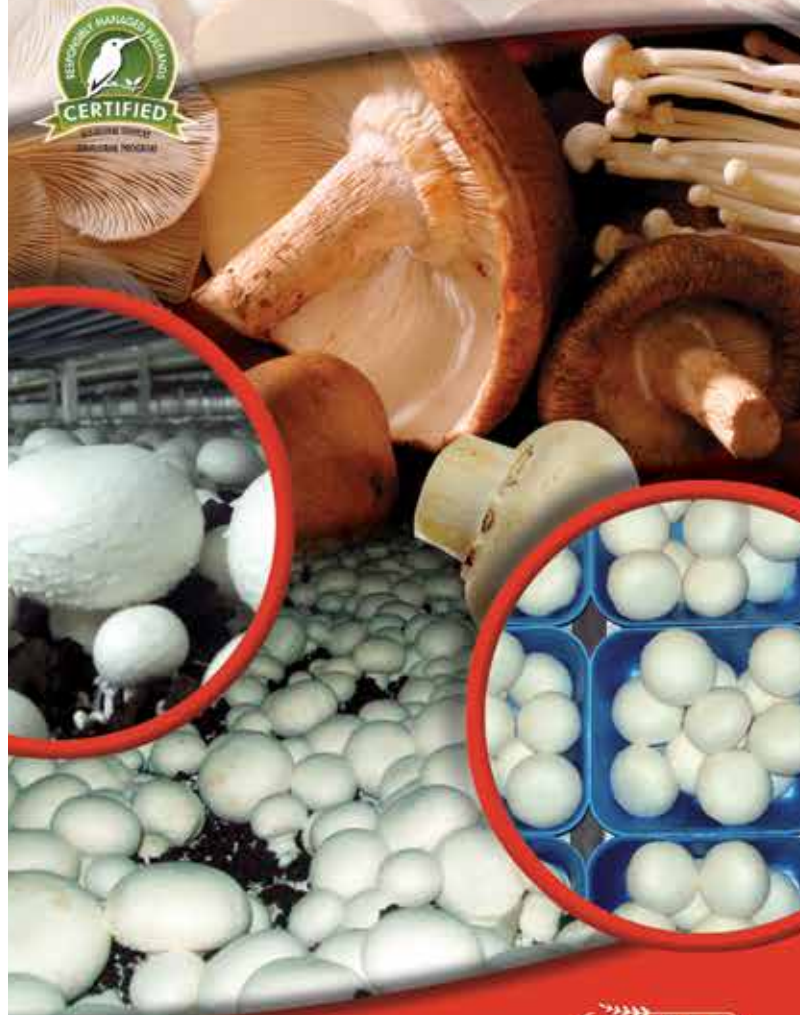
3. **Work with your certifier.**

By far the easiest way to prevent suspension or revocation of your organic certification is to work with your certifier to correct or explain any claims of noncompli-

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ance. It is our experience that most certifying agents want to work with you to rectify any issues and get you back in business.

#### 4. Know your rights.

Be informed about the organic production standards and practices, monitor any changes to the NOP's guidance and regulations, and consider hiring an attorney to ensure your operation is not at risk for suspension or revocation.

At the end of the day, if things start to go wrong with your certifying agent, following these simple steps will help in resolving most issues swiftly and keeping your organic products on the store shelves. 🍄

*The attorneys at Alston & Bird have experience guiding organic operations through this process and assisting in obtaining reinstatement from the USDA.*

#### CITATIONS:

- |  |                           |
|--|---------------------------|
| 1. See e.g., 7 USCS § 6503(a); 7 USCS § 6503(d); 65 FR 80547, 80595. | 3. §§ 205.662(a) and (c). |
| 2. See 7 C.F.R. Part 205; 7 C.F.R § 205.662.                         | 4. Id.                    |
|  | 5. § 205.662(c).          |
|  | 6. § 205.662(c).          |

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