



Industry Advice Notice

Title: Organic Non-compliance Graduated Sanctions Scale	Number: 2015/04
Date issued: 26 October 2015	Date of Expiry: Until Further Notice
Distributed to: Approved Certifying Organisations	Last Notice in the category: Nil
Instruction issued under Export Control (Organic Produce Certification) Orders	Contact details: NPGExports@agriculture.gov.au

PURPOSE

1. To advise of the Organic Non-compliance Graduated Sanctions Scale on department's website and implement a 6 months trial period.

BACKGROUND

2. The Department of Agriculture is the Australian central competent authority responsible for the export of prescribed goods, including products labelled as organic or biodynamic.
3. The legal instrument for exporting products certified as organic and biodynamic is the *Export Control (Organic Produce Certification) Orders*. The basis under which exports of these goods can occur is compliance with the National Standard for Organic and Biodynamic Produce or importing country requirements.
4. A table of graduated sanctions have been drafted following a recommendation from the European Commission (EU).
5. The European Commission has asked Australia that all sanctions concerning organics and non-compliances are effective, proportionate, progressive, dissuasive and consistent between all approved certifying organisations.

ACTION

6. Approved certifying organisations to:
 - a) Update their QM manual to include this organic non-compliance graduated sanctions scale policy; and
 - b) Implement this graduated sanctions for non-compliance policy for a period of 6 months, commencing 2 November 2015.
 - c) Provide constructive feedback to other approved certifying organisations and department during the trial period.

Organic Non-Compliance Graduated Sanctions Scale

How to use the sanctions scale

- i. Where a non-compliance against the National Standards has occurred, whether the operator acted intentionally or negligently, the approved certification body will require the operator to address the non-compliance.
- ii. The aim of this sanctions scale is to provide a framework for certification bodies to apply consistency of response to a non-conformity.
- iii. The following parameters are used when determining the level of response to a given non-conformity:
 - a. **Intent:** this is a mental attitude with which an individual acts, and therefore it cannot ordinarily be directly proved, but must be inferred from surrounding facts and circumstances. For the purposes of this document an intent can be either
 - **Negligent**, which is a failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances,
 - or
 - **Intentional**, where the activity is done with intention or on purpose.
 - b. **Extent:** determines whether the non-compliance has a far-reaching impact or whether it is limited to the farm/operation.
 - c. **Severity:** shall depend on the importance of the consequences of the non-compliance, in particular whether the land and/or product is compromised.
 - d. **Permanence:** this shall depend on the length of time for which the effect lasts, or if there is potential for correcting the non-conformity effect by reasonable means. An effect that can be corrected is **rectifiable**, otherwise the effect is of a **permanent** nature.
 - e. **Repetition:** shall be considered in two ways.
- iv. If a CAR (corrective action request) or letter of warning is issued and the conditions for correction are not applied within the designated time frame, the non-conformity will be upgraded to the next level of repetition.
- v. If non-compliance occurs with the same National Standard requirement within three (3) years of the last non-compliance, it will be considered to be a repeat occurrence and the next level of sanction will apply.

NON-COMPLIANCE GRADUATED SANCTIONS SCALE									
INTENT	EXTENT	SEVERITY	PERMANENCE	ACTION	PENALTY FOR				
					1 st REPETITION	2 nd REPETITION	3 rd REPETITION		
Negligence Examples: + Use of nonpermitted substances + Breach of OMP/SOP requirements +non compliance with specific clauses within the National Standard	Effects limited to farm and/or operation	Minimum Effect (no land or product compromised)	Rectifiable	CAR request issued	CAR to be upgraded if not rectified by the deadline	Letter of warning CAR to be upgraded	Suspension CAR to be upgraded		
			Permanent	CAR request issued	CAR to be upgraded if not rectified by the deadline	Letter of warning CAR to be upgraded	Suspension CAR to be upgraded		
		Medium Effect (land and/or product could be compromised: Land/product testing may be required)	Rectifiable (no compromise)	CAR request issued				Letter of warning CAR to be upgraded	Suspension CAR to be upgraded
			Rectifiable (compromise)	CAR request issued Product removed from market					
			Permanent (no compromise)	CAR request issued					
			Permanent (compromise)	Letter of warning CAR request issued Product removed from market	Decertification				
		High Effect (land and/or product compromised)	Rectifiable	Letter of warning CAR request issued Product removed from market		Decertification			
			Permanent	Suspension CAR request issued Product removed from market					
				Minimum Effect	Rectifiable	CAR request issued	Letter of Warning CAR to be upgraded if not rectified by the deadline	Suspension CAR to be upgraded if not rectified by the deadline	Decertification

<p>Negligence (cont)</p> <p>Examples:</p> <ul style="list-style-type: none"> + Use of nonpermitted substances + Breach of OMP/SOP requirements + non compliance with specific clauses within the National Standard 	<p>Effects also off farm and/or operation</p>	(product not compromised)	Permanent	CAR request issued.	Letter of warning CAR to be upgraded if not rectified by the deadline	Suspension CAR to be upgraded if not rectified by the deadline	Decertification
		<p>Medium Effect (product could be compromised: testing may be required)</p>	Rectifiable (no compromise)	CAR request issued	Letter of warning CAR request issued.	Suspension CAR to be upgraded if not rectified by the deadline	Decertificaiton
			Rectifiable (compromise)	Letter of warning CAR request issued Product removed from market	Suspension CAR to be upgraded if not rectified by the deadline	Decertification	
			Permanent (no compromise)	Letter of warning CAR request issued Product removed from market	Suspension CAR request issued	Decertification	
			Permanent (compromise)	Letter of warning CAR request issued Product removed from market	Suspension CAR request issued	Decertification	
		<p>High Effect (product compromised)</p>	Rectifiable	Suspension CAR request issued Product removed from market	Decertification		
			Permanent	Suspension CAR request issued Product removed from market	Decertification		

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Intentional Examples: + Use of nonpermitted substances + Breach of OMP/SOP requirements +non compliance with specific clauses within the National Standard	Effects limited to farm and/or operation	Minimum Effect (no land or product compromised)	Rectifiable	Letter of warning CAR request issued	Suspension CAR to be upgraded if not rectified by the deadline	Decertification		
			Permanent	Letter of warning CAR request issued	Suspension CAR to be upgraded if not rectified by the deadline	Decertification		
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			Rectifiable	Suspension CAR request issued Product removed from market	Decertification			
			Permanent	Decertification CAR request issued Product removed from market				
		High Effect (land and/or product compromised)	Rectifiable	Letter of warning CAR request issued	Suspension CAR to be upgraded if not rectified by the deadline	Decertification		
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<p>Intentional (cont)</p> <p>Examples:</p> <ul style="list-style-type: none"> + Use of nonpermitted substances + Breach of OMP/SOP requirements +non compliance with specific clauses within the National Standard 	<p>Effects also off farm and/or operation</p>	<p>Minimum Effect (product not compromised)</p>	Permanent	Letter of warning CAR request issued.	Suspension CAR to be upgraded if not rectified by the deadline	Decertification	
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