

November 18, 2021

MEMORANDUM TO THE NATIONAL ORGANIC STANDARDS BOARD

FROM: Jennifer Tucker, Ph.D.
Deputy Administrator
National Organic Program

SUBJECT: Request for Review: Risk Mitigation Table - Safeguarding Impartiality in USDA Organic Oversight and Enforcement.

The National Organic Program (NOP) requests that the National Organic Standards Board (NOSB) review and facilitate public comment on the NOP Risk Mitigation Table, which documents the ways NOP safeguards impartiality in the delivery of services and oversight of accredited certifiers.

As outlined in [NOP 1031](#) “Procedure: Peer Review of National Organic Program (NOP) Accreditation,” NOP engages in an annual peer review to verify adherence to the accreditation procedures required by the USDA organic regulations, and to the International Standard ISO/IEC 17011; *Requirements for accreditation bodies accrediting conformity assessment bodies*.

In 2017, the ISO/IEC standard was updated to include a new requirement for accreditation bodies to identify and document potential risks to impartiality (ISO/IEC 17011:2017). The 2020 Peer Review noted that NOP adheres to robust federal ethics rules and training and has several standard practices in place to minimize the risk of actual or perceived conflicts of interest. The Peer Review also identified the new requirement related to the documentation of risk mitigation as an opportunity for improvement, and recommended that these rules and practices be documented in one place ([2020 Peer Review Report](#)).

The new ISO standard also recommends a review of the organization’s risk mitigation controls by a representative body. Given its interest in NOP’s Peer Review process, we are requesting that the National Organic Standards Board (NOSB) serve as the “representative body” for this review. We are requesting that the Board facilitate a public review and discussion of the attached table, which documents NOP policies and practices designed to minimize real or perceived threats to the impartiality of the NOP accreditation program. NOP requests that the NOSB review the impartiality safeguards and provide feedback through a public comment process to identify or clarify any potential conflicts of interest and mitigation strategies not covered. We anticipate that either the Policy Development Subcommittee or Compliance, Accreditation, and Certification Subcommittee could be an appropriate group for this project.

We thank you in advance for your work and look forward to the discussion.



Risk Mitigation Table

Safeguarding Impartiality in the Delivery of Services and Oversight of Accredited Certifiers

1. Purpose and Scope

This document identifies the process by which the National Organic Program (NOP) identifies and safeguards impartiality in the delivery of services and oversight of accredited certifiers, as required by ISO/IEC 17011:2017.

2. Policy and Procedures

The NOP identifies, evaluates, mitigates, and documents potential conflicts of interest on an ongoing basis. NOP staff are required by federal ethics regulations to disclose any potential conflicts of interest and NOP provides the structure for evaluation and mitigation, where needed. Additionally, NOP practices ensure no individual employee may take a final action on an accreditation matter without review by multiple parties. NOP accreditation activities are also regularly reviewed by third parties, including Peer Reviewers and other government organic programs, and proposed adverse actions by NOP are appealable to higher authorities.

The NOP Quality Manager maintains the program Risk Mitigation Table, which is reviewed by NOP leadership as part of the annual Management Review, in accordance with ISO/IEC 17011:2017. Potential conflicts of interest may be raised for consideration by any member of the NOP staff, Agency, and Department leadership, by accredited certifiers, members of the National Organic Standards Board, and members of the public through twice-yearly public comment periods, or anonymously through the Program or Department complaint processes.

All USDA employees must successfully complete Federal ethics training, which includes a detailed review of Federal and Department conflict of interest regulations and policies, and the consequences of violating them. Refresher training in ethics is required of all USDA employees annually and includes direction on how to access the written Federal regulations on employee responsibilities and conduct, which provides details on how to request a review by the Office of Ethics of any potential conflict of interest and guidance on when such a review may be needed.

The need for mitigation when a conflict of interest is identified is dependent upon the specific circumstances, including the likelihood and potential harm. The following scale may be used to help determine when action is needed.

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| 1 – Remote - acceptable | no further action needed |
| 2 – Rare - acceptable | no further action needed |
| 3 – Unlikely - acceptable | no further action needed |
| 4 – Possible - not acceptable | further action needed |
| 5 – Likely - not acceptable | further action needed |



When a potential conflict of interest is “possible” or “likely” to raise a real or perceived threat to the integrity of the NOP accreditation program, NOP management reviews the specific circumstances and either establishes sufficient safeguards to place the employee’s contributions within the decision-making process in appropriate context; or removes the employee from the decision-making process.



Potential Conflict	Possible Risk	Control Measure	Monitoring Method	Objective Evidence
Past employment with the Certifier Relatives employed by a certifier Relatives employed by an operation certified by the certifier	Actual or perceived financial interest in the outcome of an accreditation decision. Actual or perceived special treatment, favoritism, or lack of objectivity in the making of accreditation decisions.	Disclosure - Federal employees are required to disclose past, employment and past, present, or known future conflicts. Depending on the circumstances, this possible risk may be mitigated by the inclusion of additional reviewers or by the removal of the conflicted employee from the decision-making process. Accreditation Managers and Auditors are not assigned to certifiers that they previously were employed by. USDA senior management are subject to annual financial disclosures reviewed by federal ethics officials.	Auditing and oversight assignments are made with the knowledge of each employee's work history and disclosed relationships.	Work assignments and accreditation decisions are recorded in the ACCREDIT database and subject to review/audit by third parties.
Favoritism, bias, or discrimination	Potential for a certifier or operator to receive a real or perceived market advantage over others if they are provided with information not available to all.	Equal access to information and training related to accreditation and certification is provided by making the regulations, guidance, and enforcement actions available through the USDA website. NOP provides training open to all certifiers at least annually and the free, online Organic Integrity Learning Center includes a wide range of training available for free to anyone. NOP staff are provided template answers to frequently asked questions to increase consistency. Oversight and enforcement actions include more than one NOP employee. NOP staff and contractors are also trained in the regulations related to when and with whom the content of a proposed rule changes may be shared.	Complaints may be filed by email to a supervisor, through the NOP complaint portal, or USDA Office of the Inspector General. Accreditation activities and documents are subject to annual third-party review.	Complaints filed, investigation reports, peer review documentation, certifier feedback surveys.



Potential Conflict	Possible Risk	Control Measure	Monitoring Method	Objective Evidence
Undue influence	Potential for a third party to inappropriately influence accreditation decisions. Potential for a third party to use the complaints process to harass a competitor or otherwise gain a market advantage.	NOP adheres to the USDA organic regulations in the decision-making process.	Compare decision with previous decisions to confirm consistency with requirements.	Adverse actions and appeal outcomes are publicly available for comparison. Accreditation decisions are subject to review/audit by third parties.
Due process	Potential perception that there could be a lack of objectivity in the appeals review process for adverse action decisions.	Appeals of NOP proposed adverse action decisions are conducted by USDA staff outside NOP. All final decisions are subject to further review by an administrative law judge and final decisions by the Department may be appealed to federal court.	All final actions are made public.	Appeals and decision documents.
Favoritism in contracting	Perception that a third-party stakeholder received special treatment or received an advantage or was disadvantaged in the awarding of contracts or cooperative agreements.	NOP follows all Federal policies and procedures when entering into contracts and cooperative agreements, including an objective eligibility review of all applicants prior to an award being made by NOP.	Federal contracting system (governed by the Federal Acquisition Regulations).	Contract or cooperative agreement award documents.
Financial interest in the outcome of enforcement actions	Potential perception that civil penalties levied in enforcement actions could be motivated in whole or in part by a desire to increase the NOP or USDA budget.	All civil penalties collected as a result of NOP enforcement actions are submitted to the U.S. Treasury and become general funds of the U.S. Government, as required by law.	USDA Budget Office processes transactions.	Check submittals, pay.gov records.