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Appraising the administrative burden of USDA organic certification: A descriptive analysis of Notice of Noncompliance data

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Abstract

Many of the challenges organic producers and processors experience are caused by how organic standards compliance is monitored and enforced—in particular, the administrative procedures that are mandated to verify that operation practices meet organic certification requirements. In this policy analysis, we examine noncompliance documentation and verification by accredited certifiers under the U.S. Department of Agriculture (USDA). Leveraging a novel and unique compilation of "Notice of Noncompliance" letters issued to organic producers and processors, we find a preponderance of administrative violations, relative to substantive ones. We discuss how the finding may help explain contemporary transformations in the organic market, as larger agri-food entities' capacity to absorb the administrative costs that frustrate smaller operations may contribute to organic market "conventionalization" and consolidation.

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Introduction

Throughout most of the world, organic food production and sales are regulated through certification schemes—voluntary programs in which food producers and processors opt into organic production and/or processing standards and the oversight that comes with them (Prakash & Potoski, 2007). For consumers, certification acts as a signal indicating that a product or production process has met certain standards (Aschemann-Witzel et al., 2013). For producers and suppliers, it offers a way to distinguish products and appeal to particular markets (Best, 2010).

How certification is experienced by producers and processors depends in large part on the way certification standards are monitored and enforced. Of particular concern to small and community farms is the extent to which certification imposes burdensome verification requirements. Both organic food advocates and the body of research suggest that the administrative side of compliance verification—from filling out paperwork to paying fees—favors large corporate operations over smaller "family" farms (Guthman, 2014), thereby causing some operations to abandon certification or discouraging them from pursuing it in the first place (Gómez Tovar et al., 2005; Sierra et al., 2008)

This policy analysis examines noncompliance and verification under the USDA National Organic Program. Drawing on a unique dataset of Notices of Noncompliance (NONCs), we present a descriptive snapshot of the types of noncompliance that are both more and less frequently cited among U.S. operations. Our findings suggest that National Organic Program verification processes attend more to administrative issues than substantive ones. We discuss the implications of our findings for the impact and durability of organic policy.

USDA Organic Certification

The 1990 Organic Foods Production Act restricts the use of the term "organic" to foods produced without (non-exempted) synthetic inputs and in conformance with USDA organic crop, livestock, handling, and labeling requirements. Operations selling food labelled "organic" are required to hold USDA organic certification.[1] According to records of the USDA Agricultural Marketing Service (2018), roughly 27,000 U.S. operations held a certification in 2015. The USDA accredits independent agents to certify producers and processors and monitor them for organic standards compliance. In 2015, this included 79 accredited certification agents.

To attain certification, operators submit an organic system plan (OSP), certification documents, and a fee to a certification agent. The operation is then inspected for congruence with the OSP. Certification is renewed annually. Organic food regulations require unannounced inspections and chemical testing on 5% of each certifier's clientele, although differences in certifier interpretations of program requirements translate to differences in implementation (Carter, 2019). USDA guidance distinguishes between "minor" and "major" noncompliance, where major noncompliance represents systematic failures that impede adherence to USDA standards. Certifier responses to noncompliance take one of four forms (Carter, 2019, p. 96):

- A non-documented directive that an operator corrects noncompliance, issued when a noncompliance is a minor issue not justifying a corrective action plan.
- A Notice of Noncompliance in which the National Organic Program is notified of the noncompliance, and the operator is required to develop a corrective action plan to ensure and verify compliance.
- A notice of proposed suspension (or denial of certification, in the case of new applicants), issued when an operator fails to correct noncompliance (or issued alongside a Notice of Noncompliance in the cases of major noncompliance).
- A notice of proposed revocation (or denial of certification, in the case of new appli-

[1] For background on the organic food movement and related policy in the U.S., see Carter, 2019, pp. 27–44.

cants), issued when a certifier finds evidence of deliberate violation of the USDA organic regulations, falsification of records, etc.

The Administrative Burdens of Organic Certification

This study examines organic standards compliance verification with emphasis on distinguishing the *substantive* and *administrative* dimensions of compliance and verification. The substantive dimension reflects operational adherence to the standards which define organic agriculture. The administrative dimension, in contrast, reflects actions and procedures by which an operation *demonstrates* its compliance (Aravind & Christmann, 2011), as well as those necessary to secure certification, such as applications and fees. Carter et al. (2018) describe the distinction when discussing the compliance costs borne by voluntary program participants:

> … other voluntary program compliance costs are clearly administrative in nature—necessary for the delivery of a program, but not inherent to the production of positive program externalities. Examples include the time and resources devoted to initial application completion and documentation of program eligibility, repetition of these processes in periodic reenrollments, tracking and verification of initial and ongoing standards compliance and associated recordkeeping, etc. (p. 210)

The administrative burdens of organic certification have long drawn the attention of policy makers and advocates. The concern was raised, for example, at the International Federation of Organic Agriculture Movements (IFOAM) 18th World Congress:

> Farmers have reported spending more time completing forms and maintaining records. A certain amount of records are essential to ensure organic farmers are meeting the organic standards…But, too much focus on paperwork can detract from farming activities that support organic principles, such as conservation and cycling of resources. (Yang, 2014, p. 2)

Sam Farr, U.S. Congressional Representative from California, expressed similar sentiments: "The concern here is how do the smaller growers, who may not have the resources to pay the cost and do all the background information that's necessary for certification—the regulatory process is growing exponentially in terms of cost" (cited in Hattem, 2013). The sentiment is again echoed in a USDA review of the National Organic Program, in which an accredited certifier agent representative stated, "comments received from clients regarding the regulations were mostly concerned with the amount of paperwork required for recordkeeping, which some considered to be excessive and burdensome" (USDA Agricultural Marketing Service, 2015, para. 16).

Study Design

Our study is a descriptive analysis of data drawn from NONCs issued under the USDA National Organic Program. We obtained the records through a 2016 FOIA request (#2016-AMS-04768-F) for all notices issued to U.S.-based operators in 2013, 2014, and 2015. Due to the USDA obligation to redact certain information, records were delivered in batches beginning in early 2017. We received the last batch in March 2019, at which time the USDA confirmed that all records within the request scope had been delivered. At the time of the request, USDA representatives indicated the number of records that the request entailed was unknown. The total number of NONCs received was 5,403. Due to the number of records and the time-consuming coding process, we drew a random sample of 538 records (roughly 10%), which make up this study's sample.

We extracted data from each record using a data entry portal in Qualtrics, an online survey platform. Because certification agents reference the Code of Federal Regulation (CFR) section numbers associated with noncompliance, we used relevant section numbers (7 CFR Part 205) as indicators of broader violation categories. We coded nine categories, with an additional "no response" category to indicate notices that were sent as a follow-up to a prior violation. An "other" category represents violations not anticipated by other categories. Table 1 summarizes the data.

Table 1. Noncompliance Violation Codes, Descriptions, and Indicators

Category	Description	Substantive/ Administrative	CFR indicators (section numbers)
Certification and fees	Certification requirements and procedures	Administrative	400–406
Records	Recordkeeping	Administrative	103
OSP	Organic production and handling system plans	Substantive/ Administrative	201
Subject to	What has to be certified, exemptions, exclusions	Substantive	100, 101, 102, 200, 670
Substances	Allowed and prohibited substances, methods, ingredients	Substantive	105, 601–606, 671, 672
Crop	Crop standards, land requirements, soil nutrient management, seeds, rotation practices, pest/weed/disease management, wild crops	Substantive	202–207
Livestock	Origin of livestock, feed, health care, living conditions, access to pasture	Substantive	236–240
Handling	Organic handling, facility pest management, commingling and contact with prohibited substances	Substantive	270–272
Labeling	Labeling, packaging, composition, marketing	Substantive	300–311
No response	Failed to respond to prior letter	n/a	n/a
Other	Cannot be categorized/no 205 subsections	n/a	n/a

We further used the coded categories to capture whether the violation precipitating a NONC was substantive or administrative in nature. Two codes, Certification and Fees and Records, reflect decidedly administrative matters. Four reflect organic production and handling standards: Substances, Crop, Livestock, and Handling; we consider these substantive matters. We likewise label Subject to and Labelling as substantive since they pertain to what practices fall under the purview of the organic standards and what/how "organic" claims are represented to consumers, respectively. We consider OSP matters both substantive and administrative, as they guide operations' conformance with standards (substantive) but are also used to document compliance (administrative).

Findings

Our sample consisted of 538 NONCs randomly drawn from the 5,403 FOIA records; 84.84% were from 2015, 8.13% from 2014, 6.84% from 2013, and 0.18% from 2012, proportions which are in line with the population provided by the USDA.[2] Although disparity in record years raised concerns regarding record population completeness (further addressed in the Discussion), the imbalance is not the product of sampling procedures. Notices ranged from one to nine pages in length, with a mean of two pages.

Table 2 presents a detailed breakdown of violation types. Because this is the first analysis of which we are aware to describe USDA organic NONCs, we present disaggregated results. We organize the findings according to violation categories, with the number of NONCs coded as exhibiting each violation type in parentheses. CFR section number frequencies follow, then the percentages of coded violations per category reflecting the section number in question. The last column reports the percentages of all NONCs in which a CFR section number was found. It is worth noting that when summed, the percentages total to over 100%, as some notices exhibited more than one violation type.

[2] For the yearly breakdown of the NONC population, we used text mining and natural language processing tools in R (Benoit & Matsuo, 2019; Ooms, 2018, 2019) to convert photocopied records to machine-readable text and extract each notice's date. As a rough measure of dates mentioned across our population, the automated extraction results support the randomness of the study sample.

Table 2. Detailed Violation-Type Coding Results

Violation categories and types by Code of Federal Regulation (CFR) section number	Frequency	% of violation category	% of all notices
Certification and fees (*n*=323)	–	–	**60.0%**
400: General certification requirements	138	35.4%	25.7%
401: Certification application	22	5.6%	4.1%
402: Application review	12	3.1%	2.2%
403: On-site inspections	3	0.8%	0.6%
404: Granting certification	21	5.4%	3.9%
405: Certification denial	14	3.6%	2.6%
406: Certification continuation	180	46.2%	33.5%
Records (*n*=90)	–	–	**16.7%**
103: Recordkeeping	90	100%	16.7%
OSP (*n*=72)	–	–	**13.4%**
201: Organic system plan	72	100%	13.4%
Subject to (*n*=21)	--	–	**3.9%**
100: What has to be certified	8	33.3%	1.5%
101: Exemptions and exclusions	2	8.3%	0.4%
102: Use of the term “organic”	6	25.0%	1.1%
200: General	7	29.2%	1.3%
670: Product inspection and testing	1	4.2%	0.2%
Substances (*n*=41)	–	–	**7.6%**
105: Allowed and prohibited substances	28	56.0%	5.2%
601: Synthetics allowed in organic crop production	10	20.0%	1.9%
602: Nonsynthetics prohibited in organic crop production	1	2.0%	0.2%
603: Synthetics allowed in organic livestock production	3	6.0%	0.6%
604: Nonsynthetics prohibited in organic livestock production	2	4.0%	0.4%
605: Nonagricultural substances allowed in/on processed products	5	10.0%	0.9%
606: Nonorganic agricultural products allowed as ingredients	1	2.0%	0.2%
Crop (*n*=56)	–	–	**10.4%**
202: Land requirements	23	33.3%	4.3%
203: Soil fertility and crop nutrients	7	10.1%	1.3%
204: Seeds and planting stock	22	31.9%	4.1%
205: Crop rotation standard	3	4.3%	0.6%
206: Crop pest, weed, disease management	13	18.8%	2.4%
207: Wild-crop harvesting standard	1	1.4%	0.2%
Livestock (*n*=27)	–	–	**5.0%**
236: Origin of livestock	6	17.6%	1.1%
237: Livestock feed	9	26.5%	1.7%
238: Livestock health care standard	2	5.9%	0.4%
239: Livestock living conditions	15	44.1%	2.8%
240: Pasture standard	2	5.9%	0.4%
Handling (*n*=30)	–	–	**5.6%**
271: Facility pest management	6	18.2%	1.1%
272: Commingling and contact with prohibited substances	27	81.8%	5.0%

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Labeling (*n*=22)	–	–	**4.1%**
300: Use of the term "organic"	4	14.3%	0.7%
301: Product composition	3	10.7%	0.6%
303: Packaged products labeled "100 percent organic"	13	46.4%	2.4%
304: Packaged products labeled "made with organic ingredients"	2	7.1%	0.4%
307: Labeling of nonretail containers	3	10.7%	0.6%
311: USDA Seal	3	10.7%	0.6%
No response (*n*=50)	–	–	**9.3%**
Other (*n*=9)	–	–	**1.7%**

Violations related to Certification procedures, recertification, and/or payment of fees constituted the most prevalent coding category, 323 NONCs (60%). The second most frequent was Records and recordkeeping, 90 NONCs (16.7%). The least frequent violation types were those related to Livestock standards (27 notices, 5%) and General requirements for certification ("Subject to"; 21 notices, 3.9%). Nine notices (1.7%) fell outside the coding parameters.

Table 3 simplifies the results by grouping the violation categories as administrative, substantive, or both. No response NONCs and Other violations are omitted. The violations were predominantly administrative in nature (73%). Fourteen percent of the notices exhibited violations related to OSPs, straddling the divide between administrative and substantive issues. Roughly 30% exhibited substantive violations, such as those related to substances or adherence to organic standards.

Table 3. Substantive versus Administrative Violations Findings

	Frequency	Percent
Administrative	392	72.9%
Administrative/substantive	72	13.4%
Substantive	155	28.8%

Note: Percentages exceed 100% when summed, as some notices exhibited more than one category.

Discussion and Conclusion

We set out to better understand standards noncompliance and verification under the USDA National Organic Program. Drawing on unique data extracted from organic NONCs, our descriptive snapshot suggests that noncompliance largely concerns administrative aspects of verification. Indeed, our findings indicate that documented noncompliances pertaining to administrative issues outnumber those related to substantive ones by more than two-to-one.

The preponderance of administrative NONCs is not inherently a cause for concern. First, organic certification is a records-based verification process, what regulatory scholars refer to as "systems" or "management-based" regulation (Carter, 2019, p. 47).[3] As such, some administrative requirements are necessary for verification of substantive standards compliance, and many substantive noncompliances are likely found through administrative review (e.g., of records). Recognizing that our categorization is relatively simple, we suggest that future research be directed toward more nuanced conceptualization and operationalization of administrative and substantive certification requirements, including the large "grey area" in which they overlap.

The prevalence of administrative noncompliances could further indicate nothing more than that some operators have a hard time adhering to administrative requirements. In this respect, our results support qualitative evidence of the challenges in navigating bureaucratic certification hoops (Gómez Tovar et al., 2005; Guthman, 2004a, 2014; Sierra et al., 2008). Coupled with existing scholarship and anecdotal accounts (such as those cited above), the findings add evidence to claims that the structure of U.S. organic certification makes the program especially demanding for

[3] We thank an anonymous reviewer for highlighting this point.

operations without the resources, personnel, or capacity to meet paperwork and recordkeeping requirements.

The implications are especially meaningful when considering an increasingly consolidated organic market. High administrative burdens may cause some organic operations to sell out to large agribusinesses, resulting in further vertical and horizontal market integration (Howard, 2009; Obach, 2007). Administrative requirements may further constitute sometimes insurmountable obstacles for producers and processors in less affluent countries (Gómez Tovar et al., 2005; Mutersbaugh, 2005). The ability of larger agri-food entities to absorb the administrative costs that frustrate smaller operations may thus contribute to organic market "conventionalization" (Guthman, 2004b).

This discussion should be considered in light of our study's notable limitations, however. Most important is the descriptive, snapshot nature of our data and simple analysis. While our data suggest that administrative issues are more prevalent than substantive ones in certification agent records, they provide no indication of why. Because our FOIA records do not contain information about operator characteristics, we have no way of knowing, for example, the extent to which administrative noncompliance issues are more prevalent among smaller operations over larger ones, much less whether they cause operations to abandon organic certification or exit organic food markets. Future research linking the data presented here to other measures offers promising lines of research. In our estimation, among the more important of such measures are operation type, relative size, ownership (e.g., sole proprietorship, partnership, corporate), and geographic location.

There is also the issue of the distribution of the Notice of Noncompliance records we received from the USDA across the three years the FOIA request was meant to cover. As noted above, while we requested all notices issued to domestic U.S. operations between 2013 and 2015, almost 85% of the records provided by the USDA were from 2015. The cause of the imbalance is unknown to us; however, the fact that the USDA was not aware of how many records they had when we submitted the FOIA request suggests the answer lies with the agency's recordkeeping. As a check on our findings, we ran the same descriptive statistics on only 2015 records, with similar results to those presented here. Nonetheless, our results clearly depict 2015 noncompliance and verification actions under the National Organic Program more completely than in the preceding years.

These limitations notwithstanding, this study's findings offer a valuable insight into organic standards noncompliance and verification. Perhaps most notably, they offer a glimpse into the most prevalent type of verification action taken under USDA National Organic Program authority, about which data have been unavailable to this point (Carter, 2019). Future research building from the findings we present here can provide additional insights into the causes and consequences of administrative burdens in organic certification, for small-scale producers and for the organic market, generally speaking.

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