

OBJECTIVE

By this catalog, there are defined measures and consequences by the producer/processor/trader have to face within the case of established non-conformities during practicing production/processing/marketing of organic products. ETKO takes references described in this catalog identifying sanction levels.

EXPLANATION OF THE MARKS

Minor Issue
Major Noncompliances

Level of deviation, definition of procedure, and sanctions to be applied:

Level of Deviation	Description of Procedure	Consequences	Validity Period
Minor Issue	<p>Notification to the operation with 'minor issue letter'</p> <p>Certifiers do not have to notify the NOP about minor issues.</p>	<p>These types of violations require correction, but do not preclude certification and do not necessitate a Notice of noncompliance (NONC).</p> <p>Certification can be granted or continued before correction.</p>	<p>No later than a prior inspection or anniversary date.</p>
Major Noncompliances	<p>Notification of the operation with 'Notice of Noncompliance' by notifying USDA</p> <p>If a failure cannot be corrected, the certifier must issue a combined NONC and Notice of Proposed Suspension or Revocation (§ 205.662(c)). If the NONC was issued during application review, it results in a denial of certification.</p> <p>Denial and Proposed Suspension of Certification</p> <p>Proposed Suspension</p> <p>Failure to resolve, successfully or within a prescribed period, a previously issued noncompliance.</p> <p>Denial of Certification (during application stage)</p> <p>Combined Notice of Noncompliance and Proposed Suspension</p> <p>Identified noncompliance is</p>	<p>Violations are correctable and time is given for correction (205.662(a)(3)).</p> <p>An approved corrective action plan must be implemented and verified.</p> <p>The operation must resolve the noncompliance before certification is granted.</p> <p>An approved corrective action plan must be implemented and verified.</p> <p>If the noncompliance is not solved on time, according to the situation;</p> <p>Notice of Proposed Suspension (NOPS).</p> <p>For applicants, a denial of certification.</p> <p>Issued Notice of Noncompliance and Proposed Suspension.</p> <p>Suspension</p>	<p>Period (30 days)</p>

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	uncorrectable. An operation is unable to comply with the USDA organic regulations.	The operator is no longer able to produce, sell, label, and represent the product as organic for the period described.
	Denial or Proposed Revocation of Certification Willful violation of the USDA organic regulations. Certifiers should notify the NOP.	Section 2120 of the OFPA (see 7 U.S.C. 6519(c)) provides for five years of certification ineligibility in response to "knowing" violations.

In case of repetition of a non-compliance defined as a minor issue, it can become Major NC depending on the severity.

The conditions of the enterprise (such as size, process complexity, the excess number of employees, the excess number of key personnel) are taken into consideration by the certification in the selection of Minor – Major NC.

In cases not specified in the Nonconformity in Catalog of measure, ETKO will decide by taking into account all the conditions related to the operator in question and the rules explained in the NOP Regulation.

If appropriate evidence of non-compliance is supplied by the operator to ETKO within the prescribed period, no sanctions apply to the operator.

Minor Issues

These types of violations require correction, but do not preclude certification and do not necessitate a notification to USDA.

Minor issues, whether found in operational practices or recordkeeping, indicate no systemic failure in the design or implementation of the organic system plan (OSP), they do not show an inability to comply with the USDA organic regulations.

Certification can be granted or continued before correction, but correction must occur within a period specified by the certifier.

The certification may include requirements for the correction of minor noncompliances within a specified period as a condition of continued certification.

Violations that can be evaluated as Minor Issues;

Noncompliant practices that:

Indicates no systemic failure in OSP design or implementation and;

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Can be easily corrected without the need for a corrective action plan.

Minor inconsistencies or omissions in records that:

Indicates no systemic failure in OSP design or implementation and;

Can be easily corrected without the need for a corrective action plan.

Major Noncompliance

Violations that fall into this category are correctable and a certifier is to allow time for their correction (§ 205.662(a)(3)).

They are serious or complex enough to require an approved corrective action plan and the certifier is to verify the implementation of the approved plan.

Failure to correct (or successfully rebut) these violations in a prescribed period indicates that an operation is unable or unwilling to comply with the USDA organic regulations.

Failure to correct (or successfully rebut) violations cited in a NONC may result in a Notice of Proposed Suspension or, if the NONC was issued as part of an application review, a denial of certification.

Also, unlike a minor issue, if a NONC is issued as part of the application process for certification, the operation must resolve the noncompliance before certification is granted

If a violation cannot be corrected, the certifier must issue a combined NONC and Notice of Proposed Suspension or Revocation (§ 205.662(c)).

Violations that can be evaluated as issued Major Noncompliance ;

Noncompliant practices that:

Are significant enough in nature or in scope to require a corrective action plan to ensure and verify compliance.

Inconsistencies or omissions in records that:

Indicates no systemic failure in OSP design or implementation but;

Are significant enough in nature or in scope to require a corrective action plan to ensure and verify compliance.

Denial or Proposed Suspension of Certification

USDA - NOP distinguishes between situations warranting a Proposed Suspension and those warranting a Combined Notice of Noncompliance and Proposed Suspension each other.

The most common reason for a NOPS is a failure by an operation to successfully rebut or correct violation(s) identified in a NONC within a prescribed period.

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Failure to adequately respond to a NONC may result in a denial of certification or a NOPS.

7 C.F.R. § 205.662(c) allows certifiers to issue a combined Notice of Noncompliance and Proposed Suspension, without having previously issued a NONC, when an identified noncompliance is uncorrectable.

Some violations indicate the 'systemic failure' of an operation's OSP, either in design or implementation, showing that an operation is unable to comply with the USDA organic regulations. Systemic failure would be one or more violations that Show an operation is unable to comply with the OFPA and the USDA organic regulations.

Systemic failure could be evidenced by multiple violations, indicating that an operation's OSP does not meet the requirements of § 205.201, either in design or in practice.

Serious OSP design problems should be identified during the review of an application for certification, per the regulations at § 205.402(a)(2).

The accidental application of prohibited substances to land also is considered uncorrectable non-compliance and should result in a denial of certification or a combined Notice of Noncompliance and Proposed Suspension. Portions of land must be suspended as warranted.

For example, the accidental application of a prohibited substance to only part of an operation's land could result only in the suspension of the affected land, if it can be shown that the application was not willful. Land to which prohibited substances have been applied must be suspended from organic operation for three years, under § 205.202 of the regulations.

Section 205.662(d) of the regulations also provides for the issuance of a NOPS alone in response to a willful violation, but willful violations should most often, if not always, result in a Notice of Proposed Revocation.

Violations that can be evaluated as issued Proposed Suspension

Failure to resolve, successfully or within a prescribed period, a previously issued noncompliance.

Violations that can be evaluated as issued Combined Notice of Noncompliance and Proposed Suspension

The systemic failure of OSP design or implementation demonstrates an inability to comply with the regulations.

Accidental or otherwise un-willful application of a prohibited substance to land.

Denial or Proposed Revocation of Certification

This category of enforcement concerns the denial of certification and Notice of Proposed Revocation (NOPR) in response to willful violation of the USDA organic regulations.

The willful violation involves the deliberate sale, labeling, or representation of agricultural products as organic in violation of the regulations. The products in question could be conventional products

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misrepresented as organically produced, or products produced by a certified operation knowingly in violation of the USDA organic regulations.

Evidence that such violations were committed willfully or knowingly is very important in these cases and certifiers should not propose revocation unless they have such evidence.

Section 2120 of the OFPA (see 7 U.S.C. 6519(c)) provides for five years of certification ineligibility in response to "knowing" violations.

Accordingly, a NOPR is appropriate when sufficient evidence exists to show that an operation deliberately violated the USDA organic regulations.

Specific types of noncompliance that merit a NOPR follow:

- The deliberate application of prohibited substances to land or product, as well as the deliberate use of practices prohibited by the regulations.
- Falsification or concealment of records from the certifier or its inspectors. The OFPA provides for a five-year revocation of certification for making false statements at 7 U.S.C. 6519(c)(1)(A).
- Refusal by an operation to provide access to facilities for inspection or access to records. Section 205.400 of the regulations mandates access to facilities for an onsite inspection and access to records for review. Refusal of such access constitutes a willful violation
- Continuing violation of the regulations following a suspension of certification. These violations often will be selling, labeling, or representing agricultural products after certification is suspended. Since the operation was previously certified, such violations are considered knowing and willful.

As stated above, certifiers should notify the NOP when evidence shows that an operation has knowingly sold, labeled, or represented agricultural products in violation of the USDA organic regulations, as civil penalties or other enforcement responses may be appropriate.

Similarly, certifiers should notify the NOP when evidence shows that an operation has made false statements or concealed records.

Violations that can be evaluated as Denial or Proposed Revocation of Certification

Deliberate violation of the regulations, including:

Willful sale, labeling, or representation of conventional agricultural products as organic;

Willful sale, labeling, or representation of agricultural products as organic in violation of the regulations;

Willful application of prohibited substances or use of prohibited practices.

Falsification or concealment of records.

Refusal to provide access to a unit, facility, or site for inspection⁴ or access to records applicable to an organic operation.

Continuing non-compliance with the regulations following a proposed suspension.

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