

OBJECTIVE


By this catalog there are defined measures and consequences by the producer/processor/trader has to face with in the case of established non-conformities during practicing production / processing / marketing of organic products. This catalogue is a part of the GP 15 Procedure. ETKO takes references described in this catalogue identifying sanction levels.

EXPLANATION OF THE MARKS

Minor Issue
NC
Major

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

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

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	Identified noncompliance is 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 time 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 non-compliance defined as a minor issue, it can become NC depending on the severity.

In case of repetition of a non-compliance defined as NC, it can become Major 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 – NC - Major.

In cases not specified in the Nonconformity in Catalog of measure, ETKO will make a decision 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 TIME 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 Notice of Noncompliance (NONC).

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 time period specified by the certifier.

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

Violations that can be evaluated as Minor Issues;

Noncompliant practices that:

Indicate no systemic failure in OSP design or implementation and;

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

Minor inconsistencies or omissions in records that:

Indicate no systemic failure in OSP design or implementation and;

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

Non-Compliance - NC (Notice of Noncompliance)

Violations that needed a NONC, do not indicate a systemic failure in OSP design or implementation, and therefore do not indicate that an operation is otherwise unable to produce or handle agricultural products in compliance with the USDA organic regulations.

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 time 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 an NC 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 an NC 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 NONC;

Noncompliant practices that:

Indicate 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.

Inconsistencies or omissions in records that:

Indicate 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.

Major Noncompliance - Denial or Proposed Suspension of Certification

These violations warrant a Notice of Proposed Suspension (NOPS) or, to applicants for organic certification, a denial of certification.

USDA - NOP distinguish 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 time period.

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 an 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 an uncorrectable noncompliance 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, pursuant to § 205.202 of the regulations.

Section 205.662(d) of the regulations also provide 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 time period, a previously issued noncompliance.

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

Systemic failure of OSP design or implementation that demonstrates inability to comply with the regulations.

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

Major Noncompliance – Denial or Proposed Revocation of Certification

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

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

Specific types of noncompliance that merit an 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 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 Major Noncompliances – 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 organic operation.

Continuing noncompliance with the regulations following a proposed suspension.