



Noncompliances and Adverse Actions

Even with careful attention to the regulations, an operation can end up out of compliance. Violations of the regulations can result in letters of noncompliance and Adverse Actions. This article will walk you through these notices and how to address them.



What You'll Learn

- What Noncompliances and Adverse Actions are
- Options for responding to Noncompliances and Adverse Actions
- The rebuttal, appeal, and mediation processes
- How maintaining good communication with your certifier can help you resolve or avoid Noncompliances and Adverse Actions

Organic certification is continuous but not automatic. Once you achieve certification, your certifier conducts a review of your status at least once per year through an on-site inspection and an Organic System Plan update. That review determines whether your certification continues. This applies equally whether you're new to organic or certified for years. Issues sometimes arise, and the certification process accounts for such. Smaller issues can be corrected within a set timeframe while certification continues, while more significant ones come with written notice and a clear deadline to respond before any action affects your certification. There are 3 different types of responses to issues that you may get from your certifier: Minor Issues, Notice of Noncompliance, and Adverse Action.^{1,2}

MINOR ISSUES

After your initial application for certification or annual update has been thoroughly reviewed, your on-site inspection report submitted by the inspector, and your certifier has determined that you qualify for certification, they will send you a certification letter. These are what you want to receive each year after inspection!

Sometimes, there are Minor Issues raised in your inspection report and records review. If so, your certifier may ask for further information in this letter before they will issue your certificate. Your certification letter may also include specific conditions for your certification, with requirements for correcting the Minor Issues within a specific timeframe.

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This article assumes some baseline understanding of the certification process. See our [Certification Process Overview](#) article for necessary background.

💡 HANDLER TIP

How to Respond to a Minor Issue

You have two options for responding to a minor issue: correct it and submit supporting documentation, or submit a rebuttal. Both must be done within the timeframe provided in your letter.

Consequences for Not Addressing the Issue

If you fail to respond, correct the issue, or rebut the finding within the timeframe provided in your letter, your certifier may issue a Notice of Noncompliance.

Example of a Minor Issue: You added a new air curtain to your loading bay door to prevent flying insects from entering the facility. While this is a good practice and is compliant with the pest management practices in the USDA organic regulations, you didn't update your Organic System Plan with the new practice. Your certification letter may then include this as a Minor Issue and require that you update your OSP to reflect the new pest management practices and submit evidence of that update to your certifier within a provided timeframe.



DEFINITION

A **corrective action** is a response to a certification issue submitted to the certifier by the operation. It describes the action(s) taken by the operation to correct the issue, provides evidence supporting how the issue was corrected, describes how the issue will be prevented in the future, and describes steps taken to control noncompliant product (when appropriate).

A **rebuttal** is a response of disagreement to a certification issue, submitted to the certifier by the operation. It describes why the operation thinks the certifier's determination of an issue is incorrect, and provides evidence to support the assertion that the operation is in compliance with the regulations on that issue.

NOTICE OF NONCOMPLIANCE

This letter addresses a compliance issue that is more significant than a Minor Issue, and requires a corrective action plan. This is commonly the next step if a condition for continued certification was not resolved by the deadline, or if you don't respond to a certifier's deadline to send them more information. You may also receive a noncompliance if your practices don't align with the organic standards, or your records are insufficient. Most commonly these issues are identified at an annual or unannounced inspection, or during a review of your Organic System Plan.

An example of a more significant issue that could result in a letter of noncompliance is using an organic label claim that had not been pre-approved by the certifier before being used on a product for sale. Recordkeeping updates alone would not be enough to remedy this because the product has already reached the market and been distributed to the consumer. One possible remedy would be a corrective action plan, which could include submitting the label for approval, correcting any issues (if applicable), and updating your SOP on label approval to ensure all staff know that the certifier needs to approve the label before use. Another option is to submit a rebuttal, which could consist of submitting documentation (like email communication) that the label was approved by the certifier, but that you had mistakenly not uploaded it to your certifier's files.

Noncompliances are common in the industry. Ultimately they are an opportunity to improve your systems. Consider them great learning opportunities that can help identify issues like documentation gaps and insufficient training.



HANDLER TIP

How to Respond to a Noncompliance

You have two options for responding to a Noncompliance: correct it and submit supporting documentation, or submit a rebuttal. Both must be done within the timeframe provided in your letter.

Consequences for Not Addressing the Issue

If you fail to respond, correct the issue, or rebut the finding within the timeframe provided in your letter, your certifier may issue a Proposed Adverse Action.

ADVERSE ACTION

Adverse Actions are issued in response to violations that are determined to be uncorrectable, systemic, or willful. Non-compliances can elevate to Adverse Actions if an operation does not rebut or correct the issue.

There are a few types of Adverse Actions, which can each be resolved through mediation or appeal. Let's look at the three main types:

Notice of Denial of Certification

If a new applicant for certification does not rebut or resolve a Notice of Non-compliance by a given deadline, the certifier will propose denying certification. Sometimes a certifier will issue a combined Notice of Noncompliance and a Denial of Certification. This could occur if they don't think the handler can comply with the organic regulations.³

Notice of Proposed Suspension of Certification

This letter sets a date when certification will be suspended, unless mediation is requested or an appeal is filed. Suspended operations must immediately cease making organic claims, and must go through the reinstatement process prior to achieving certification again. Sometimes the Notice of Suspension gives a period of ineligibility that the suspended operation must wait before being reinstated. Most commonly these letters result from a failure to correct or respond to a Notice of Noncompliance.

In rare cases certifiers may send a combined Notice of Noncompliance and Proposed Suspension of Certification. These can be issued when a noncompliance issue is uncorrectable and it appears that the operation is not able to follow the organic standards. For example, if an operation used a new processing aid without submitting it for prior approval to the certifier, and then sold that product labeled with organic claims, this action could be uncorrectable if the processing aid is found to be prohibited.

Notice of Proposed Revocation of Certification

This letter sets a date when certification will be revoked unless mediation is requested or an appeal is filed. These are reserved for cases when the operation knowingly violated the standards. Like, for example, deliberately using a prohibited substance or falsifying records. Generally, revoked operations cannot reapply for certification for 5 years.



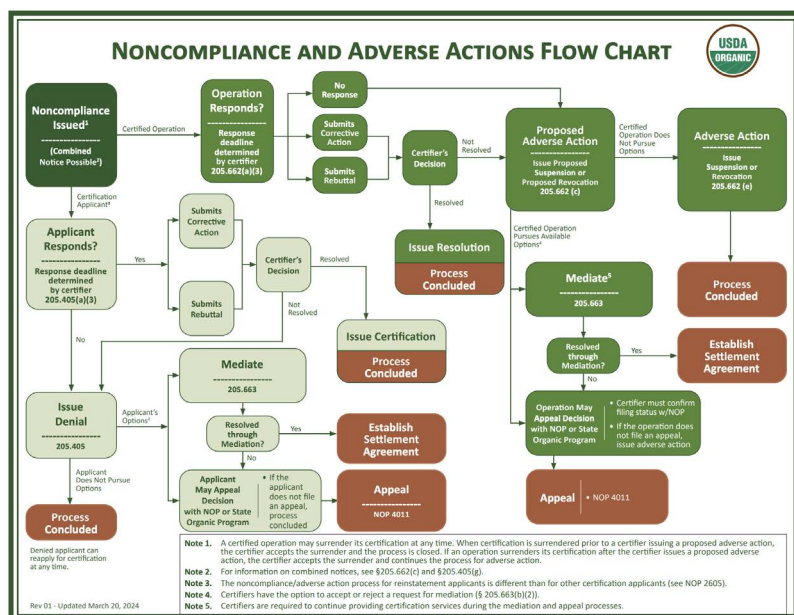
HANDLER TIP

How to Respond to a Proposed Adverse Action

You have two options for responding to an adverse action letter: request mediation, and if that fails, file an appeal. You must submit your request prior to the date given in the letter or 30 days from receiving the letter, whichever occurs later.

Consequences for Not Addressing the Issue

If you fail to respond with a request for mediation or appeal within the timeframe above, your certifier will move forward with the Adverse Action and the process will conclude with the termination of your active organic certification.



LEARN MORE

The USDA National Organic Program has published a [detailed flowchart](#) illustrating the Noncompliance and Adverse Action process, including the types of responses and consequences available at each step.

MEDIATION

Mediation is available as a remedy for denial of certification and proposed adverse action. The goal of mediation is to identify specific terms that, when met, will result in full compliance with USDA organic regulations. The terms could be specific practices you must implement and additional inspections to verify these practices are in place to maintain your certification. Alternatively, you might achieve compliance by agreeing to surrender your certification and remove all organic claims from your products.

You must request mediation in writing within 30 days of receiving the letter.⁵ Your certifier can accept or reject (with justification) your request for mediation. If your request for mediation is accepted:

- Both parties agree on the person conducting the mediation. As long as you agree on the mediator, you do not have to involve an outside mediator, and you and the certifier can mediate between yourselves.
- If mediation is successful, the certifier will outline these terms in a Settlement Agreement that is signed by both parties. You have 30 days from the start of mediation to reach an agreement.
- If mediation is unsuccessful, you have 30 days to appeal.

If your request for mediation is rejected, you can appeal within 30 days of receiving your written rejection of mediation.

Typically, certifiers want to work with you to figure out a solution. And it is often a collaborative, amicable, and professional process.

APPEAL

You can file an appeal within 30 days if you receive a Notice of Proposed Suspension, Revocation, or Denial of Certification, or within 30 days if mediation is rejected or fails. It's also possible that your certifier gives you a longer deadline.⁶

Operations located in California submit appeals to the California Department of Food and Agriculture. All other operations submit appeals to USDA National Organic Program. The adverse action notice will include the contact information for the appropriate appeals team.

Your appeal must include a copy of the Adverse Action and the reasons you think the decision was not proper or in accordance with the organic standards.

The NOP Appeals Team may ask for more information from you or the certifier. They review the appeal information and recommend an appeal outcome to the NOP Deputy Administrator, who will decide if a settlement agreement should be offered. There is a similar process for operations located in California who submit appeals to the California Department of Food and Agriculture



For more detailed information on the appeals process, see [NOP 4011 Appeals Procedures](#) and [eCFR :: 7 CFR 205.681 -- Appeals](#).

Certification Status During the Appeals Process

The appeal process can take time! If you were already certified, your certification will remain valid during the appeals process, even with an outstanding Notice of Proposed Suspension, or Revocation.^{6,7} You and your certifier will continue to follow the annual certification process while the appeal is being reviewed.

FREQUENTLY ASKED QUESTIONS

Certification involves detailed, operation-specific requirements that take time to learn, so new handlers often have questions about how the standards apply to their operation. With experience, most handlers become familiar with their certifier's expectations and how to meet them. Below are questions new handlers frequently ask.

What are common reasons a certifier issues a Notice of Noncompliance?

You fail to meet a deadline given by the certifier to submit updated paperwork or fees.

Your practices don't align with the organic standards, or your records are insufficient. Most commonly these issues are identified at an annual or unannounced inspection, or during a review of your Organic System Plan.

You didn't respond to a request for more information about your certification by the certifier's deadline.

Should I be worried if I get a Notice of Noncompliance?

Notices of Noncompliance can be resolved. Noncompliance letters are written in regulatory language, but the underlying issue is usually straightforward to address. As long as you communicate with your certifier and work to resolve the issue, your certification does not need to be in jeopardy. Certifiers are generally supportive in helping clients work through the noncompliance process.

How can I respond to a Notice of Noncompliance?

Note the deadline in the letter, by that date you should either:²

- Propose a corrective action plan to bring your operation into compliance by a specific date; or
- Rebut, by providing information showing why you believe you are in compliance.

If you have questions about a noncompliance, contact your certifier, this is especially useful early on, as you're still becoming familiar with how the organic standards apply to your operation. Certifiers can clarify a noncompliance through several channels beyond the written letter: an informal phone call or email to walk through what's being asked, or a more formal follow-up call or written response if the issue needs more detail.

Can a Minor Issue result in an Adverse Action?

Yes. Although each situation can be unique, a common progression is:⁴

- Your annual certification letter states that you must correct a minor issue to continue certification, perhaps a record was incomplete at inspection. The letter states that you must correct the issue by the next inspection to avoid escalation.
- If you don't correct the issue by the next inspection, your certifier may issue a Notice of Noncompliance.
 - If you then submit a corrective action plan your certifier can accept it and issue a Noncompliance Resolution. Part of the resolution will include verifying that the issue was corrected within a specific time frame. If you address the issue by the next inspection, you are back in compliance.
- However, if the issue was not resolved by the next inspection then the certifier would likely issue another Notice of Noncompliance or a Notice of Noncompliance combined with a Notice of Proposed Suspension, depending on the severity of the issue. And thus, a Minor Issue has escalated to an Adverse Action.

What happens if I don't respond to a Notice of Noncompliance?

- If you don't respond to the Notice of Noncompliance by the specified deadline a Notice of Proposed Suspension may be issued.² If you don't request mediation or file an appeal in response to your Notice of Proposed Suspension by the certifier's deadline your organic certification may be suspended. Once suspended, you must remove all organic claims from your packaging, sales records, and marketing materials. Suspended operations must not sell, label, or represent agricultural products as organic.
- You will need to go through the reinstatement process if you wish to be certified organic again. The reinstatement process is time-consuming and may require additional fees. You are essentially submitting a full new application packet, undergoing another initial inspection, and then an additional review by USDA National Organic Program before a certification decision can be made.

What happens if my certification is suspended?

You are no longer certified organic and can no longer sell, label, or represent your product as organic.² The Organic Integrity Database will be updated within 3 days of your suspension to show this change. You can reapply for certification at any time (unless otherwise stated in the suspension notice) but you will need to go through the reinstatement process.

What happens if my certification is revoked?

You are no longer certified organic and can no longer sell, label, or represent your product as organic.² The Organic Integrity Database will be updated within 3 days of your revocation to show this change. You are not eligible to be certified again for 5 years from the date of your revocation.

CONCLUSION

Many noncompliances and Adverse Actions are often a result of poor communication. Don't get suspended because you didn't communicate with your certifier. Work to address certification issues promptly and don't let them escalate. Your certifier may be able to work with you on reasonable extensions of deadlines to help you avoid escalation.



ACTION ITEMS

- Call your certifier with any questions or if you need a reasonable extension. They may work with you.
- Make sure your certifier has your most up to date contact information, and that their emails are going to an inbox where they will get read.
- Carefully and promptly read all letters from your certifier.

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Agricultural Marketing Service
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