

Strengthening Organic Enforcement: Compliance, Mediation, and Appeals

SOE includes many mechanisms that prevent organic fraud and mishandling *before* it happens (e.g., certification of more businesses in supply chains, NOP Import Certificates, improved recordkeeping and traceability). The rule also updates the processes and procedures for handling noncompliance *after* it occurs. Key changes include clearer authority to strengthen enforcement against uncertified operations, updates to promote the use of mediation as an alternate dispute resolution method, and revisions to the appeals process.

This document discusses sections [K. Compliance and Noncompliance Procedures](#), [L. Mediation](#), and [M. Adverse Action Appeal Process](#). Regulatory text is paired with a plain-language description of what the change means. **The bolded text** indicates a **key concept**.

General Comments from the National Organic Program: Over the past several years, AMS has introduced new appeals processes and enforcement procedures that stress alternative dispute resolution solutions that bring operations into compliance more quickly than the traditional noncompliance escalation steps. SOE integrates many of these processes into the regulations. The updates also clarify NOP’s ability to enforce against uncertified operations through formal administrative law processes.

K. Compliance and Noncompliance Procedures

Section	Regulatory Text	Key Takeaways
205.660	Compliance—General.	
205.660 (c)	Note: <i>This is a new paragraph! Former paragraphs (c) and (d) are now (d) and (e), respectively.</i> The Program Manager may initiate enforcement action against any person who sells, labels, or...implies...[a] product is...organic, if the product was produced or handled in violation of the OFPA or the regulations in this part.	The change clearly states NOP’s authority to take enforcement action against uncertified operations or individuals that falsely represent conventional products as organic.
205.661	Investigation.	Changing the title of § 206.661 more clearly states that NOP has authority to investigate uncertified operations (not just certified operations) for violations of OFPA and the regulations.
205.100	What has to be certified.	

Section	Regulatory Text	Key Takeaways
(c)	Any person or responsibly connected person that... [knowingly sells fraudulent organic products or makes false claims is subject to civil penalties, fines, or imprisonment]	SOE clarifies that the penalties for organic fraud apply to responsibly connected persons who created or perpetuated the fraud.
205.662	Noncompliance procedure for certified operations.	
(e)(3)	Within 3 business days of issuing a notification of suspension or revocation , or the effective date of an operation's surrender , the certifying agent must update the operation's status in the Organic Integrity Database.	Certifiers provide a specific timeframe by which certifiers must report critical changes in operation status (i.e., status changes that could affect the integrity of products that another operation buys or receives) by updating INTEGRITY.
(f)(1)	A certified operation or a person responsibly connected with an operation whose certification has been suspended may... submit a request...for reinstatement of its certification, or submit a request for eligibility to be certified...	A person responsibly connected to a suspended operation may lose eligibility to be certified . Just like an operation, this responsibly connected person must apply through NOP to review their eligibility for certification.
(g)(1)	[In addition to suspension or revocation, any certified operation that] knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than the amount specified in 7 CFR 3.91(b)(1)(xxvi) per violation .	Civil penalties have generally been used mostly with uncertified operations. This clarifies that certified operations may also be fined in addition to losing their certification. This change explicitly notes that certified more precisely cites the maximum civil penalty for violations.

L. Mediation

Section	Regulatory Text	Key Takeaways
205.663	Mediation.	§ 205.663 has been divided into subparagraphs for clarity.
(a)	A certifying agent must submit with its administrative policies and procedures : decision criteria for acceptance of mediation, and a process for identifying personnel conducting mediation and setting up mediation sessions per § 205.504(b)(8).	Certifying agents must include mediation criteria and procedures in their administrative policies and procedures. This is needed to fulfill due process requirements under the Administrative Procedures Act (APA) when cases proceed through an administrative law process.

Section	Regulatory Text	Key Takeaways
(b)	A certified operation or applicant for certification may request mediation to resolve a denial of certification or proposed suspension or proposed revocation of certification issued by a certifying agent or State organic program.	This codifies that mediation is an available method of alternative dispute resolution to resolve noncompliances before an operation or certifying agent appeals to AMS.
(b)(1)	A certified operation or applicant for certification must submit any request for mediation in writing... within 30 calendar days of receipt of the notice of proposed suspension or proposed revocation of certification or denial of certification.	Clarifies the timeline to submit a request for mediation. 30 days aligns with the timeframe provided to submit an appeal of a proposed adverse action.
(b)(2)	A certifying agent or State organic program may accept or reject a request for mediation based on the decision criteria required in paragraph (a) of this section. Certifying agents must document these criteria. and how the certifying agent applied the criteria to the request.	Decision criteria for accepting or rejecting mediation must be fair and not arbitrary . The agent must be able to document how standard criteria were used to make a specific acceptance or rejection decision.
(b)(3)	If a certifying agent rejects a mediation request, it must provide this rejection, and the justification for the rejection, in writing to the applicant for certification or certified operation. The rejection must include the right to request an appeal, pursuant to § 205.681 , within 30 calendar days of the date of receipt of the written notification of rejection of the request for mediation.	SOE adds a reference to the updated appeals process in § 205.681 to clarify what steps the certifier and operation should take following rejection of a mediation request.
(b)(4)	(4) When an operation appeals a rejection of mediation, the adverse action which is contested must not be finalized during the appeal proceeding.	The rule clarifies that the adverse action being contested cannot be finalized during the appeal proceeding. This clarification supports the right to due process .
(c)	Both parties must agree on the person conducting the mediation.	This is required for both formal and informal mediation.
(d)	If a State organic program is in effect, the parties must follow the mediation procedures established in the State organic program and approved by the Secretary.	All parties must follow any additional mediation requirements of a State organic program.
(e)	The parties to the mediation have a maximum of 30 calendar days to reach an agreement from the start of mediation .	Clarifies that the 30 days starts when mediation starts. This paragraph also clarifies what the successful outcome of



Section	Regulatory Text	Key Takeaways
	Successful mediation results in a settlement agreement agreed to in writing by both the certifying agent and the certified operation. If mediation is unsuccessful, the applicant for certification or certified operation has 30 calendar days from receipt of a written notice of termination of mediation to appeal the denial of certification or proposed suspension or revocation pursuant to §205.681 .	mediation looks like: the goal of mediation is to reach a settlement agreement that leads to compliance (either by exiting the market or coming into compliance).
205.663 (f)	Any settlement agreement reached through mediation must comply with the Act and the regulations in this part. The Program Manager may review any mediated settlement agreement for conformity to the Act and the regulations in this part and may reject any agreement or provision not in conformance with the Act or the regulations in this part.	Clarifies that NOP , not the Secretary, may review mediated settlement agreements.
205.663 (g)	The Program Manager may propose mediation and enter into a settlement agreement at any time to resolve any adverse action notice.	Clarifies that NOP may use mediation as part of its oversight, compliance, and enforcement activities.
205.504	Evidence of expertise and ability. [certifying agents]	
	A private or governmental entity seeking accreditation...must submit...documents and information to demonstrate its expertise in organic production or handling techniques [and] its ability to fully comply with and implement...205.661 through 205.663...	Certifiers must include mediation criteria and procedures in the information that they provide to demonstrate their ability to comply with the organic regulations.
(b)(8)	<i>Administrative policies and procedures.</i> (8) A copy of reasonable decision criteria for acceptance of mediation, and a process for identifying personnel conducting mediation and setting up mediation.	

M. Adverse Action Appeals Process

Section	Regulatory Text	Key Takeaways
205.2	Terms defined.	
205.2	<i>Adverse action.</i> A noncompliance decision that adversely affects certification, accreditation, or a person subject to the Act, including a proposed suspension or revocation; a denial of certification, accreditation, or reinstatement; a cease and desist notice; or a civil penalty.	<i>Adverse action</i> is a newly defined term that replaces <i>noncompliance decision</i> throughout the appeals sections of the regulation. It clarifies what specific types of notices are appealable .
205.680	Adverse Action Appeal Process—General.	
(d)	Persons subject to the Act who believe they are adversely affected by an adverse action ... may request mediation as provided in § 205.663.	<i>New paragraph! Former (d) is redesignated as (f).</i> Cross-reference to mediation as an appropriate course of action to resolve an adverse action before a party appeals.
(e)	All appeals must comply with the procedural requirements in § 205.681(c) and (d).	<i>New paragraph! Former (e) is redesignated as (g).</i> Cross-reference to appeals filing requirements.
205.681	Adverse Action Appeals Process—Appeals.	
(a)	Adverse actions by certifying agents. An applicant for certification may appeal...	SOE changes the title of this paragraph from “Certification appeals” to “Adverse actions by certifying agents” to better distinguish it from adverse actions by the NOP.
(a)(2)	If the Administrator or State organic program denies an appeal, a formal administrative proceeding will be initiated to deny, suspend, or revoke the certification unless the parties resolve the issues through settlement, or the appellant waives or does not timely request a hearing ...	SOE clarifies that denial of an operation’s appeal does not always result in a formal administrative hearing. The affected parties may choose to accept a settlement or waive or decline a hearing . If a hearing is waived or not requested, the certifier issues the adverse action without a formal proceeding. This is an important change in the default from “Hearing” to “no Hearing unless requested.”
(b)	Adverse actions by the NOP Program Manager. A person affected by an adverse action, as defined by § 205.2, issued by the NOP Program Manager, may appeal to the Administrator.	This section updates the outcomes that may follow an appeal. The regulations formerly only addressed the continuance or denial of accreditation. SOE adds that if an appeal is sustained :



Section	Regulatory Text	Key Takeaways
(b)(1)	(1) If the Administrator sustains an appeal, an applicant will be issued accreditation, a certifying agent will continue its accreditation, or an operation will continue its certification, a civil penalty will be withdrawn and a cease-and-desist notice will be withdrawn , as applicable to the operation.	<ul style="list-style-type: none"> • An operation may continue certification, and • Civil penalties and cease-and-desist notices are withdrawn. <p>If an appeal is denied:</p> <ul style="list-style-type: none"> • IF the appellant wants to further contest the notice, he/she must timely request a formal hearing. • Civil penalties may be levied during the Hearing process • The parties may resolve the matter through settlement before a Hearing
(b)(2)	If the Administrator denies an appeal, a formal administrative proceeding will be initiated to deny, suspend, or revoke the accreditation or certification and/or levy civil penalties unless the parties resolve the issues through settlement , the appellant waives a hearing , or the appellant does not timely request a hearing...	
(c)	<i>Filing period.</i> An appeal must be filed in writing within the time period provided in the letter of notification or within 30 days... An adverse action will become final and nonappealable unless an appeal is timely filed.	SOE updates this paragraph to remove “noncompliance decision” and use “adverse action,” It also clarifies that an adverse action becomes final unless an appeal is timely filed.
(d)(1)	Appeals to the Administrator and Requests for Hearing must be filed in writing and addressed to: 1400 Independence Ave., [etc.] ... or electronic transmission , NOPAppeals@usda.gov	SOE adds an email address where appeals may be sent electronically.
(d)(3)	All appeals must include a copy of the adverse action and a statement of the appellant's reasons for believing that the action was not proper...	The regulation now uses the new term <i>adverse action</i> to encompass the decisions an appellant may appeal.