



Agricultural Marketing Service Office of the Administrator Adverse Action Appeal Process for the National Organic Program

1. Purpose and Scope

The Organic Foods Production Act of 1990 (OFPA) calls for an expedited appeals procedure that gives persons adversely affected by a proposed action the opportunity to appeal that adverse action.¹ The National Organic Program (NOP), in conjunction with the Agricultural Marketing Service (AMS) Office of the Administrator and State organic programs, implement the expedited appeals procedure pursuant to §§ 205.680 and 205.681 of the U.S. Department of Agriculture (USDA) organic regulations. In 2023, the Strengthening Organic Enforcement final rule (88 FR 3548) updated many sections of the organic regulations, including the adverse action appeals process. This document: 1) explains the adverse action appeal process; 2) clarifies the roles and responsibilities of those involved in the adverse action appeal process; and 3) describes possible appeal outcomes.

2. Policy and Procedures

An adverse action is defined at § 205.2 as “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.” An appeal is a written request that a higher authority reexamine the decision of another body. The recipient of an adverse action may appeal such decision in accordance with §§ 205.680 and 205.681. As required by general appeal procedures in the USDA organic regulations, all appeals are expeditiously reviewed and decided in an unbiased manner by persons that were not involved in the initial decision to propose an adverse action.

2.1 Appeal Rights

A certified operation, an applicant for certification, an uncertified operation, a certifier, an applicant for accreditation, a suspended certified organic operation, or other persons subject to the Act who believe they are adversely affected by an adverse action may submit an appeal to the AMS Administrator or State organic program in accordance with § 205.681.

2.2 Appealable Adverse Actions

¹ 7 U.S.C. 6520(a).



Adverse actions that may be appealed include: 1) proposed suspension of certification or accreditation; 2) proposed revocation of certification or accreditation; 3) denial of certification or accreditation; 4) combined notice of noncompliance and proposed suspension or revocation; 5) cease and desist notice; 6) denial of reinstatement; and 7) civil penalty notice.

2.2 Procedural Review

An appeal must comply with the procedural requirements in § 205.681(c) – (d) of the USDA organic regulations.

Filing Period

The party filing the appeal (appellant) must file the appeal within 30 days of receipt of the notification of the adverse action, or within the timeframe specified in the notification, whichever occurs later.

Where and What to File

The appellant must submit the appeal and any accompanying documentation, in writing, to the AMS Administrator c/o the NOP Appeals Team by mail or email using dated return receipts. Appeals to the State organic program must be filed in writing to the address and person identified in the letter of notification. The appeal must include a copy of the notification of the adverse action, and “the reasons for believing the action was not proper or made in accordance with applicable program regulations.” (See § 205.681(d))

The NOP Appeals Team notifies the appellant of any missing required documentation if it did not accompany the appeal. The appellant may correct any procedural deficiencies before the filing period ends or by any subsequent deadline set by the NOP Appeals Team.

Appeal Dismissed

The NOP Appeals Team reviews the appeal and accompanying documentation to determine if the procedural requirements have been met. Appeals not filed within the allotted timeframe may be dismissed.

Appeal Referred

If the appellant is located solely in a State with an approved State organic program, then the NOP Appeals Team may refer the appeal to the State organic program.

Appeal Acknowledged

When the procedural requirements are met, the NOP Appeals Team formally acknowledges its receipt of the appeal. The NOP Appeals Team sends the appellant and the entity involved in the adverse action a letter notifying the parties of its receipt of the appeal. The letter also notifies the



appellant of its rights during the appeal process and requests that the appellant and the entity involved in the adverse action submit further documentation as evidence in support of their positions, to develop the administrative record.

2.3 Operation and Certifier Status During an Appeal

The appeal acknowledgement letter makes clear that:

- a) A currently certified operation remains certified during the appeal process unless its certification is otherwise suspended or revoked. During the certified operation's appeal process, the certifier maintains its oversight of the operation. A decision-making body may at any time issue additional proposed adverse actions, which the operator may also appeal.
- b) An already suspended or revoked operation or certifier remains suspended or revoked during the appeal process. (Examples of when this would occur: A suspended operation appeals a Denial of Reinstatement; a revoked operation appeals a Denial of Certification; a suspended or revoked operation appeals a Cease and Desist Notice; a Civil Penalty Notice.) The NOP may at any time issue additional adverse actions, which the operator or certifier may also appeal.
- c) An uncertified operation, applicant for certification, or applicant for accreditation remains uncertified or nonaccredited during the appeal process. The NOP may issue additional adverse actions, should additional violations arise separate from the appeal process, which also may be appealed.
- d) A currently accredited certifying agent remains accredited during the appeal process unless it is otherwise suspended or revoked. During the appeal process, the NOP maintains oversight of the certifier. The NOP may at any time issue additional proposed adverse actions, which the certifier may also appeal.

2.4 Substantive Review and Recommendations

In developing the administrative record, the NOP Appeals Team may request additional relevant and/or clarifying documentation from the appellant, the decision-making body that proposed the adverse action, and any other relevant source.

Once the administrative record is complete, the NOP Appeals Team reviews the substance of the case, writes a case summary setting forth the positions of the appellant and the decision-making body that proposed the adverse action, and recommends an appeal outcome (from the possible appeal outcomes below) to the NOP Deputy Administrator. The NOP Deputy Administrator has the discretion to offer a settlement agreement to the appellant to close the appeal without a formal Administrator's Decision, or recommend an Administrator's Decision to either deny the appeal and accept the recommended adverse action, or sustain the appeal and overturn the proposed adverse action.

However, if a settlement agreement is not offered to the appellant, and if the NOP was involved in developing the proposed adverse action (i.e., if the NOP issued the adverse action, or if it



advised a certifier in its development), the NOP Appeals Team sends the administrative record and case summary, and, subsequently, the Administrator's Decision, to a USDA AMS designee who was not involved in the issuance of the adverse action. This designee conducts a substantive case review and recommends an appeal outcome (from the possible appeal outcomes below) to the AMS Administrator.

The AMS Administrator subsequently issues a decision either to sustain or deny the appeal. In the AMS Administrator's absence, the Associate Administrator, or other government official delegated the acting authority to sign the Administrator's Decision, may sustain or deny the appeal.

2.5 Possible Appeal Outcomes

An appeal may be closed by settlement agreement, closure letter, or an Administrator's Decision.

Settlement Agreement

For all appeals, the NOP may offer to engage in alternative dispute resolution with the appellant, with the goal of reaching a settlement agreement. The settlement agreement may require the operation to comply with specific terms by a certain deadline. Examples of such terms include, but are not limited to, submitting requested documentation and/or information, submitting certification renewal materials and/or certification fees, agreeing to additional inspections or oversight, paying a civil penalty, and/or ceasing representing, selling, or marketing product as organic. Once signed by the appellant and the NOP, the fully executed settlement agreement is provided to the parties, the appeal is closed, and the operation's certifier oversees the operation's compliance with the agreement. If the terms of the settlement agreement are met, the adverse action which had resulted in the agreement is considered closed after the period of time identified in the agreement. If the terms of a settlement agreement are not met, the agreement is terminated and the adverse action that led to the appeal is reinitiated. The NOP may return to the federal administrative process.

Where the NOP executes a settlement agreement with an operation, the certifier is generally responsible for ensuring that the terms of the agreement are met. Once the operator fulfills the terms of the agreement, no further action in this regard is required by the certifier. However, if the operator does not fulfill the terms, the certifier notifies the NOP immediately. The NOP confirms settlement agreement implementation during certifier accreditation assessments. Where the NOP executes a settlement agreement with an uncertified operation or a certifier, the NOP is responsible for ensuring that the terms of the agreement are met.

Closure Letter

In certain cases, the NOP may close an appeal without a formal Administrator's Decision or a NOP settlement agreement with an operation or certifier. For example, if the issue has been fully resolved as a result of communication clarifications, if procedural errors have occurred, and/or and the NOP or certifier has acknowledged the operation's full compliance, the appeal may be



closed without a Decision. If an appeal wasn't timely filed, it is dismissed and the decision-making body issuing the adverse action notice will issue a final decision, i.e., suspension of the operation for which a proposed suspension had been recommended in the adverse action notice. The closure letter explains the reasons for closing the appeal and the implications of this outcome.

Administrator's Decision – Appeal Denied

The AMS Administrator may determine that it is more likely than not that the appellant violated the USDA organic regulations. Consequently, the Administrator signs a Decision denying the appeal (i.e., upholding the adverse action) and setting forth the evidence which lead to the decision to deny the appeal. The appellant is then provided an opportunity to request or waive a hearing before an Administrative Law Judge. If the hearing is waived, or a request for an administrative hearing isn't timely, the Administrator's Decision is implemented.

Administrator's Decision – Appeal Sustained

The AMS Administrator may determine that it is more likely than not that the appellant's arguments are correct. Consequently, the Administrator signs a Decision upholding the appeal, setting forth the evidence supporting the appellant's position, and the adverse action is overturned and must be withdrawn.

3. References

Organic Foods Productions Act of 1990, as amended

7 U.S.C. 6520 Administrative Appeal.

USDA Organic Regulations ([7 CFR Part 205](#))

7 CFR 205.680 General.

7 CFR 205.681 Appeals.

Document Control

This document supersedes “National Organic Program Adverse Action Appeal Process – Certified Operation or Applicant for Certification,” and “National Organic Program Adverse Action Appeal Process – Accreditation Appeals” dated June 3, 2010, which are now obsolete.

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