



## NOP Complaints Policies and Procedures

### Purpose

This document illustrates the procedure for handling and resolving complaints that are submitted to the National Organic Program (NOP) concerning the administration and application of program regulations by the NOP, certifying agents, certified operators and entities utilizing invalid certification.

### Scope

These operations procedures apply to National Organic Program personnel and Agricultural Marketing Service (AMS) Compliance Office personnel with authorized responsibility for handling complaints regarding certifiers, certified operations and uncertified entities.

### Standards Reference

ISO/IEC 17011: 2004(E) 5.9 Complaints. The accreditation body shall establish procedures for dealing with complaints. The accreditation body a) shall decide on the validity of the complaint, b) shall, where appropriate, ensure that a complaint concerning an accredited CAB is first addressed by the CAB, c) shall take appropriate actions and assess their effectiveness, d) shall record all complaints and actions taken, and e) shall respond to the complainant.

7 CFR Part 205.661 Investigation of certified operations. (a) A certifying agent may investigate complaints of non-compliance with the Act or regulations of this part concerning production and handling operations certified as organic by the certifying agent. A certifying agent must notify the Program Manager [sic] of all compliance proceedings and actions taken pursuant to this part. (b) A State organic program's governing State official may investigate complaints of non-compliance with the Act or regulations in this part concerning organic production or handling operations operating in the State.

### Policy

The National Organic Program maintains a telephone hotline, electronic mailbox and a postal address for the members of the general public to file a complaint regarding alleged violations of NOP regulations. Instructions on filing a complaint are posted on the NOP website, <http://www.ams.usda.gov/nop/Compliance/FileComplaint.html>. Complainants are advised to submit as much information as possible regarding their concern, i.e. who, what, when, where, why, how, and any supporting documentation. The complainant receives a written acknowledgement of receipt of the complaint. Intake, investigation and most instances, resolution, is handled by the AMS Compliance Office.

AMS Compliance Officers will review complaints which are not referred or dismissed to verify the circumstances. Any entity determined to be in breach of NOP regulations is informed in writing of the violation(s), and necessary corrective actions and is required to respond to the notification. An entity may be held accountable for any willful or knowing violations uncovered in the course of investigation even if the noncompliances which prompted the complaint are resolved. Complaints which concern policy issues are referred directly to the National Organic Program before further action are taken by the Compliance and Analysis Program.



In observance of the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. note 601), the complaint procedures foster cooperation among the Agency and small businesses that is resolution-oriented rather than punitive.

## **Procedure**

### **I. Receipt and Acknowledgement of Complaint**

1. Complaints are received by email, fax, phone or in person. The Agency has established a special email account and telephone hotline for the purpose of receiving NOP complaints.
2. A written acknowledgement of receipt is sent to the complainant, if identity is disclosed. Acknowledgement may be through email, telephone or in person conversation.

### **II. Review and Action**

3. Each complaint is handled by one Compliance Officer who assigns a case number, and conducts a preliminary review on the entity and area of operation in alleged nonconformance and details of the non-compliance(s). This information is recorded on the Complaint Intake Form. The identity of the complainant is not actively pursued in order to protect the release of such information to the public or the subject of the complaint.
4. After initial review a complaint may be referred, dismissed or retained by Compliance for further review.
  - (A) Referred for further action to:
    - (i) NOP for all policy issues or NOP procedures;
    - (ii) A State Organic Program (SOP) when the complaint involves a certified operator or non-certified operator operating in a state where there is an approved SOP.

The SOP may:

      - (a) Refer the case to the certifying agent
      - (b) Dismiss, resolve, initiate noncompliance action, and/or refer the case back to NOP
    - (iii) A certifying agent when the complaint involves a certified operator in a state where there is no approved SOP.
      - (a) The Compliance Officer issues a letter or email to the certifying agent to describe the complaint and request that the agent investigate the validity of the alleged noncompliance. At times specific instructions on what needs to be verified are provided. The agent is given a deadline for response or interim progress report to the Compliance Officer. The agent can dismiss, resolve, initiate a non-compliance action or refer the complaint back to NOP. If non-compliance is verified, the agent is expected to take the appropriate action to resolve the situation or initiate non-compliance proceedings. This is monitored by a Compliance Officer.



The SOP and certifying agents report their actions to the Compliance Office and all documents pertaining to the complaint should be available to the NOP and/or AMS Compliance upon request. If the certifying agent or SOP fails to initiate appropriate action, the complaint and the agent's actions or inactions are referred to the NOP by the Compliance Office.

The SOP or certifying agent may refer cases back to the NOP in the following circumstances:

- (i) Failure to resolve the case
  - (ii) Lack of expertise to resolve a case
  - (iii) Lack of resources or authority to pursue civil action
  - (iv) SOP makes specific request for NOP assistance
- (B) Dismissed:
- (i) The alleged violation does not fall within the purview of OFPA or NOP Rule; or,
  - (ii) Information in the complaint is inadequate to pursue further action
- (C) Reviewed:
- Complaints not referred or dismissed are subject to further review by a Compliance Officer, State Organic Program or certified agent to determine whether alleged non-compliance(s) occurred.
- (i) If non-compliance is verified, the Compliance Officer issues a letter to the non-compliant entity specifying the violation(s), requirements for corrective actions, possible consequences of outstanding non-compliances and a date by which a written response to the allegation(s) must be received.
  - (ii) If the review suggests that the non-compliance was willful, that the operator sold, labeled or represented as organic a product that was known not to be compliant, or the operator otherwise submitted a false statement, the Compliance Officer will refer the complaint to the Associate Deputy Administrator for Compliance, Safety and Security.
  - (iii) If the initial review determines that a complete investigation may be warranted, the complaint is referred to the Associate Deputy Administrator for Compliance, Safety and Security.
5. A case is resolved when the non-compliant entity addresses the allegations and demonstrates and documents that the operation is, or will take corrective action to become compliant. When the investigation uncovers willful or knowing violations, gaining current compliance does not necessarily stop the punitive action for significant past violations. This is evaluated on a case-by-case basis with Compliance Office and NOP input.
6. Upon resolution the Compliance officer issues a letter to the entity implicated in the complaint for those cases that are reviewed. The letter states review findings, additional actions expected of the entity (if any), and the reason(s) for closing the case. Copies of resolution letters, and all letters sent by the Compliance Office on behalf of their program, are forwarded to the NOP Associate Deputy Administrator (ADA).



7. In cases which are referred to the NOP by the Compliance Office, SOP or certifying agent, the NOP ADA will determine which enforcement actions are appropriate as determined by:
- (A) the seriousness of the violations;
  - (B) intent and willfulness;
  - (C) number and pattern of past alleged violations involving the entity;
  - (D) failure to correct a violation after receiving instruction to do so, or
  - (E) other considerations that may bear upon this case.

The options for action include:

- (i) Assess a civil penalty and issue a cease and desist order. This action is pursued with the assistance of investigators in the Compliance Office under the supervision of the Chief Compliance Officer and Associate Deputy Administrator for Compliance, Safety and Security and the Office of General Counsel.
- (ii) Issue a written warning and issue a cease and desist order.
- (iii) Initiate a non-compliance action against an accredited certifying agent or certified operator.
- (iv) Dismiss when the alleged violations have no merit, and/or the allegation(s) cannot be proven.

The NOP will notify the alleged non-compliant party and AMS Compliance when the case is closed.

8. The complaint and action(s) taken is recorded and maintained by the Compliance Office.
9. The Compliance Officer will notify the complainant in writing when a case is closed if the complainant requests such information. Details on the outcome of the complaint will not be routinely provided unless they have been requested under the Freedom of Information Act.

### **Document Control and Retention**

All documents related to this process are retained in AMS Compliance for 10 years.

Complaint Intake Form

Complaint Referral to NOP

Resolution letters

Closure letter to complainant

Record of action taken

Related correspondence