



Instruction

National Organic Program Complaint Handling Procedure

1. Purpose

This document outlines the procedures for handling complaints that are filed under the Organic Foods Production Act (OFPA) of 1990 (7 USC 6501 et seq.) and its related laws and regulations.

2. Scope

These operational procedures apply to National Organic Program (NOP) Compliance and Enforcement (CE) Division personnel and any other Agricultural Marketing Service (AMS) personnel delegated the responsibility for enforcing the OFPA and its related laws and regulations.

3. Background

The NOP was established as a result of the OFPA that requires the U.S. Department of Agriculture (USDA) to develop national standards for organically produced agricultural products to assure consumers that agricultural products marketed as organic meet consistent, uniform standards. The OFPA and NOP regulations (7 CFR Part 205) require that agricultural products labeled as organic originate from farms and handling operations certified by a State or private entity that has been accredited by USDA.

The NOP is a marketing program housed within the USDA, Agricultural Marketing Service. The NOP develops, implements, and administers national production, handling, and labeling standards for organic agricultural products. It accredits certifying agents (foreign and domestic) who inspect organic production and handling operations to certify that they meet USDA standards. It enforces organic production, handling, and labeling standards.

4. Policy

4.1 CE Division Roles and Responsibilities

1. The *CE Division* is responsible for managing the NOP complaint system.
2. The *Complaint Coordinator* checks the various mechanisms through which information is received and records all incoming correspondence in the CE Division Correspondence Log. The Complaint Coordinator, in consultation with the CE Division Director, forwards potential complaints to the Compliance Specialists for investigation.
3. The *Compliance Specialists* investigate NOP complaints and update case database and case folders as cases progress.



4. The *CE Division Director* provides oversight of the NOP complaint handling process to ensure consistent and effective outcomes. The CE Division Director also keeps the NOP Deputy Administrator apprised of significant issues and activities reflected by the complaints.

4.2 NOP Complaints

Any person may file a complaint if he or she believes a violation of the OFPA or its implementing regulations has occurred or is about to occur. Instructions for filing a complaint are posted on the NOP website at www.ams.usda.gov/nop/compliance/filecomplaint.html. Complainants are advised to submit as much as information as possible regarding their concerns, i.e. who, what, when, where, why, how, and any supporting documentation.

The NOP compliance staff through investigative and compliance monitoring activities can also generate complaints.

It is the NOP's policy to investigate all complaints it receives that allege violations of NOP rules and regulations.

5. Procedure

5.1 Communication with the NOP

The NOP receives information from the public through the following mechanisms:

Telephone: (202) 720-3252;

Fax: (202) 205-7808;

Email: NOPcompliance@usda.gov; and

Postal Mail:

NOP Compliance and Enforcement Branch
Agricultural Marketing Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Mail Stop 0268, Room 2646-S
Washington, D.C. 20250-0268

5.2 Review of Incoming Correspondence

1. All incoming correspondence to the CE Division is reviewed and recorded in the CE Division Correspondence Log by the Complaint Coordinator.
2. When issues clearly fall outside the NOP jurisdiction, the incoming communication is treated as correspondence and closed out with an appropriate response.
3. When a communication does not allege violations of NOP regulations, but raises NOP related questions that can be addressed by the CE Division, a response, preferably by email, is provided.
4. When a communication does not allege violations, but raises policy issues or asks complex questions about the NOP, it is referred to other NOP Divisions.



5. When a communication alleges violations, it is forwarded to a Compliance Specialist for investigation.
6. All referral and assignments are generally completed within a week of the receipt of a communication.

5.3 The NOP Complaint Handling Process

The NOP complaint handling process consists of three processes: Intake, Investigative, and Case Closing.

5.4 Intake Process

Upon receipt of a communication, the Complaint Coordinator reviews and confirms that it is a complaint. The Complaint Coordinator enters the complaint into the NOP Complaint Database and assigns a case number. The Complaint Coordinator establishes a case file and starts a Complaint Investigation Chronology Log. Additional activities include:

5.5 Acknowledgment of Complaints

1. An acknowledgement of receipt is provided to the complainant when the complainant's identity is disclosed (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). Acknowledgements are auto-generated when complaints are filed through NOPcompliance@usda.gov and manually generated when Complaints are filed through other mechanisms.
2. Complaints are generally acknowledged immediately when filed through the NOPCompliance@usda.gov and within 72 hours if filed by other means.

5.6 Referral of Complaints

1. Complaints Referred to State Organic Programs
 - a. When a complaint involves a certified or non-certified operator operating in a state where there is an approved State Organic Program (SOP), it is referred to the SOP. The SOP may refer the case to the certifying agent, dismiss, resolve, initiate noncompliance action, and/or refer the case back to NOP. Cases referred to SOPs are handled by the SOPs according to their particular accreditation agreements.
 - b. Complainants are notified of such referrals.
 - c. An SOP may refer cases back to the NOP for the following reasons:
 - i. Failure to resolve the case;
 - ii. Lack of expertise to resolve a case;
 - iii. Lack of resources or authority to pursue civil action; or
 - iv. A specific request for NOP assistance.
2. Complaints Referred to Accredited Certifying Agents(ACA)
 - a. When a complaint involves a certified operator in a state where there is no approved SOP, it is referred to the ACA on record.



-
- b. The Compliance Specialist issues a letter to the ACA and requests that the ACA investigate the validity of the alleged noncompliance. Alleged issues are described in as much detail as given in the complaint and a 30-day deadline for response is given. At times, specific instructions on what needs to be verified are provided.
 - c. The ACA investigates the complaint and reports its findings to CE Division along with supporting documentation. Any noncompliances found will be addressed by CE Division in order to ensure proper adverse action procedures are followed and the NOP can utilize civil penalties when appropriate.
 - d. Compliance Specialists conduct follow-up activities on cases referred to ACAs. Follow-up activities are generally concluded within 30 days of receipt of the requested information and documents.
 - e. ACAs may refer cases back to the NOP for the following reasons:
 - i. Failure to resolve the case;
 - ii. Lack of expertise to resolve a case;
 - iii. Lack of resources; or
 - iv. A specific request for NOP assistance.

5.7 Complaints for CE Division Investigation

1. When a complaint alleges violations by a SOP or ACA, or by a non-certified operator, it is retained for CE Division investigation. The CE Division may also handle and/or coordinate the investigation of complaints where it deems necessary, e.g. involving multiple ACAs.
2. These complaints are generally investigated within a target of 90 days.

5.8 Investigative Process

This process is managed by Compliance Specialists and consists of two categories of activities: (1) following up on complaints referred to ACAs and (2) conducting investigations of complaints assigned.

5.9 Following up on Complaints Referred to ACAs

1. Compliance Specialists ensure that complaints referred to ACAs are properly investigated. Specifically, Compliance Specialists:
 2. Ensure that information requested in the referral letters is submitted within the proposed timelines and grant extensions where appropriate. Extensions and unforeseen delays are properly documented.
 3. Upon receipt of information, evaluate whether actions taken by ACAs are adequate to address the complaints.
 4. Determine whether further investigation by the ACAs or by the NOP is warranted.



5. Draft appropriate closure documents to the complainant, the ACA and/or the operator.

5.10 Conducting Investigations of Complaints Retained for CE Division Investigation

The following procedures provide general guidelines for the investigative process.

1. Investigation is generally initiated within a week after a case is assigned.
2. Initial contact to the charged party and the complainant is conducted by telephone, whenever possible. The reason for the call and information requests are discussed and clear deadlines for information submission are agreed upon. Generally, response time should not exceed 2 weeks. A follow-up email capturing the conversation is sent immediately afterwards.
3. If there is no telephone number available or there is no response to telephone messages within a reasonable timeframe, an initial contact letter is sent by electronic and/or regular mail requesting the recipient to respond within 5 days. When there is no response to the contact letter, a warning letter is sent.
4. If further information indicates that the alleged violation does not fall within the scope of OFPA or NOP Regulations, or where information in the complaint is inadequate to pursue further action, the case is dismissed.
5. If information is not provided within the deadline and no extension is requested, another letter is sent advising the recipient that we expect to receive the information within 1 week and we will proceed with the case after that based on current information in the file.
6. All information gathered is analyzed to establish facts that tend to prove or disprove the alleged violations.
7. The investigation is concluded with a Case Closure Memorandum. For cases involving the issuance of a Notice of Noncompliance, a written Report of Investigation (ROI) is drafted. The ROI outlines the allegations and the applicable statutes and regulations, organizes the findings and supporting evidence to allow for a logical conclusion, and recommends resolution options. Should actions by AIA Division be required, a recommendation requesting such action shall be included in the ROI.

Complaints may be referred to the CA Program for investigation, if the violations are willful and severe and may involve criminal or civil penalties. Compliance Specialists bring such cases to the attention of the CE Division Director for further action.

5.11 Case Closing Process

Compliance Specialists conduct the following activities to ensure proper case closure:

1. Compliance Specialists draft relevant closing documents to include:
 - a. Notice to Complainant of Case Closure;



- b. Notice to ACA – No Violations;
 - c. Notice to ACA – Noncompliance (issued by AIA Division);
 - d. Notice to Certified Operation – No Violations;
 - e. Notice to Certified Operation – Noncompliance;
 - f. Notice to Uncertified Operation – No Violations;
 - g. Notice to Uncertified Operation – Warning Letter;
 - h. Notice to Uncertified Operation – Noncompliance.
2. Once approved, the documents are finalized and sent to recipients by Fed Ex (United States Postal Service (USPS) if sending to a post office box). When email addresses are available, closure documents can be emailed as PDF files.
 3. Compliance Specialists annotate their calendars for further monitoring activities.
 4. A Case Closure Memorandum is drafted by the Compliance Specialist and signed by the CE Division Director.
 5. The Complaint Database and case folders are updated and properly closed out.
 6. Case files are filed in the file cabinets.

5.12 Follow-up Procedures (for Closed Cases Where Violation(s) Occurred)

For cases closed with the “Closed – follow-up required” closure category, follow-up activities are conducted 30 to 90 days after case closure, depending on the corrective actions required. An annual review of such cases, up to 20%, based on a random selection, is also conducted at the end of the fiscal year.

6. Records

All documents related to this process are retained for 5 years after the final action.

Approved on July 22, 2011