

United States Department of Agriculture
Agricultural Marketing Service

National Organic Program Online Training



National Organic Program Appeals Team Overview



NOP Appeals Team – Overview:

- Organizational Structure
- Legal Authority
- Appeal Cycle
- Procedural Review
- Substantive Review
- Additional Information

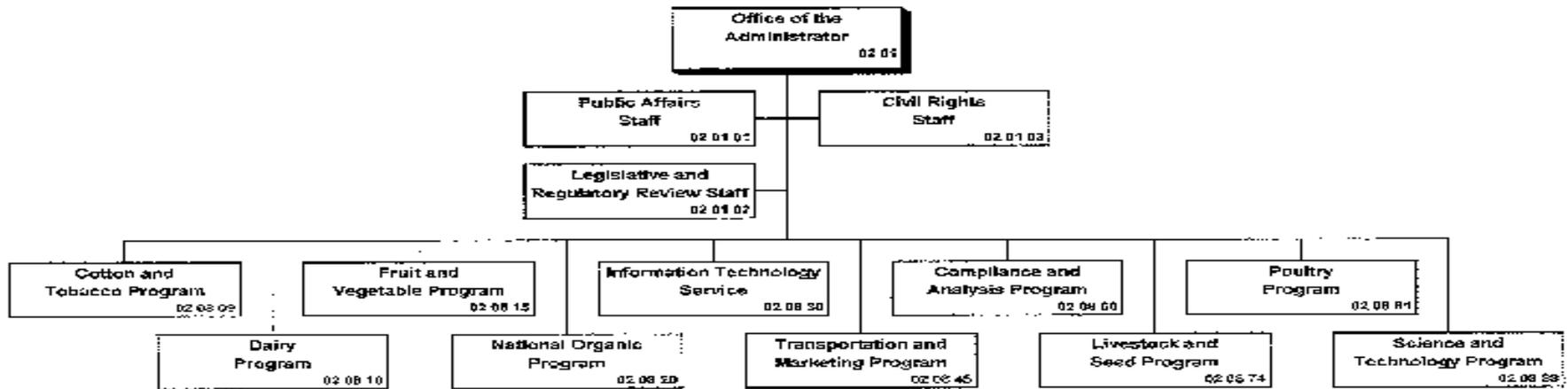


Organizational Structure

U.S. DEPARTMENT OF AGRICULTURE
 AGRICULTURAL MARKETING SERVICE

Supersedes AMS chart dated July 3, 2008

RECOMMENDED: *Ann Huff* 8.13.09
 Director, Secretary for
 Marketing and Regulatory Programs
 APPROVAL: *Stewart S. Papp*
 Assistant Secretary of Administration
 DATE: 10-05-09

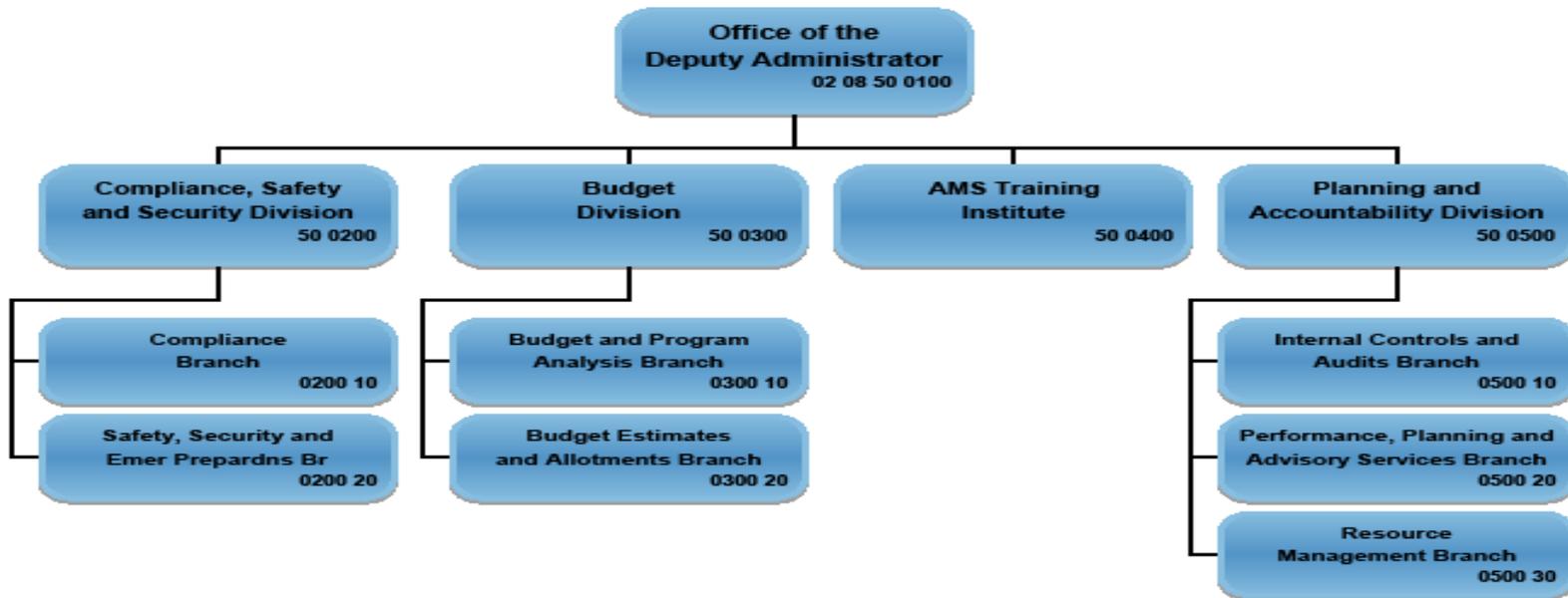


The mission of the Agricultural Marketing Service is to facilitate the competitive and efficient marketing of agricultural products.



Organizational Structure

AGRICULTURAL MARKETING SERVICE
DEPUTY ADMINISTRATORS
COMPLIANCE AND ANALYSIS





Legal Authority

Organic Foods Production Act, 7 U.S.C. § 6520

- (a) EXPEDITED APPEALS PROCEDURE. The Secretary shall establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this chapter that:
- (1) adversely affects such person; or
 - (2) is inconsistent with the organic certification program established under this chapter.



Legal Authority

NOP Regulations (7 C.F.R. § 205)

§ 205.680 General.

- (a) Decision of the National Organic Program's Deputy Administrator.
- (b) Decision of a State organic program.
- (c) Decision of a certifying agent.
- (d) Method of communication - place of business by a delivery service which provides dated return receipts.
- (e) All appeals shall be reviewed, heard, and decided by persons not involved with the decision being appealed.



Legal Authority § 205.681 Appeals

- (a) Certification appeals.
- (b) Accreditation appeals.
- (c) Filing Period – time provided in the notice or within 30 days from receipt of the notification, whichever occurs later.
- (d) Where and what to file:
 - (1) Appeals must be filed in writing and sent to: Administrator, USDA, AMS, c/o NOP Appeals Team, Stop 0203, Room 1114-S, 1400 Independence Avenue, SW., Washington, DC 20250.
 - (3) Appeals must include a copy of the adverse decision and a statement of the appellant's reasons for believing that the decision was not proper or made in accordance with applicable program regulations, policies, or procedures.

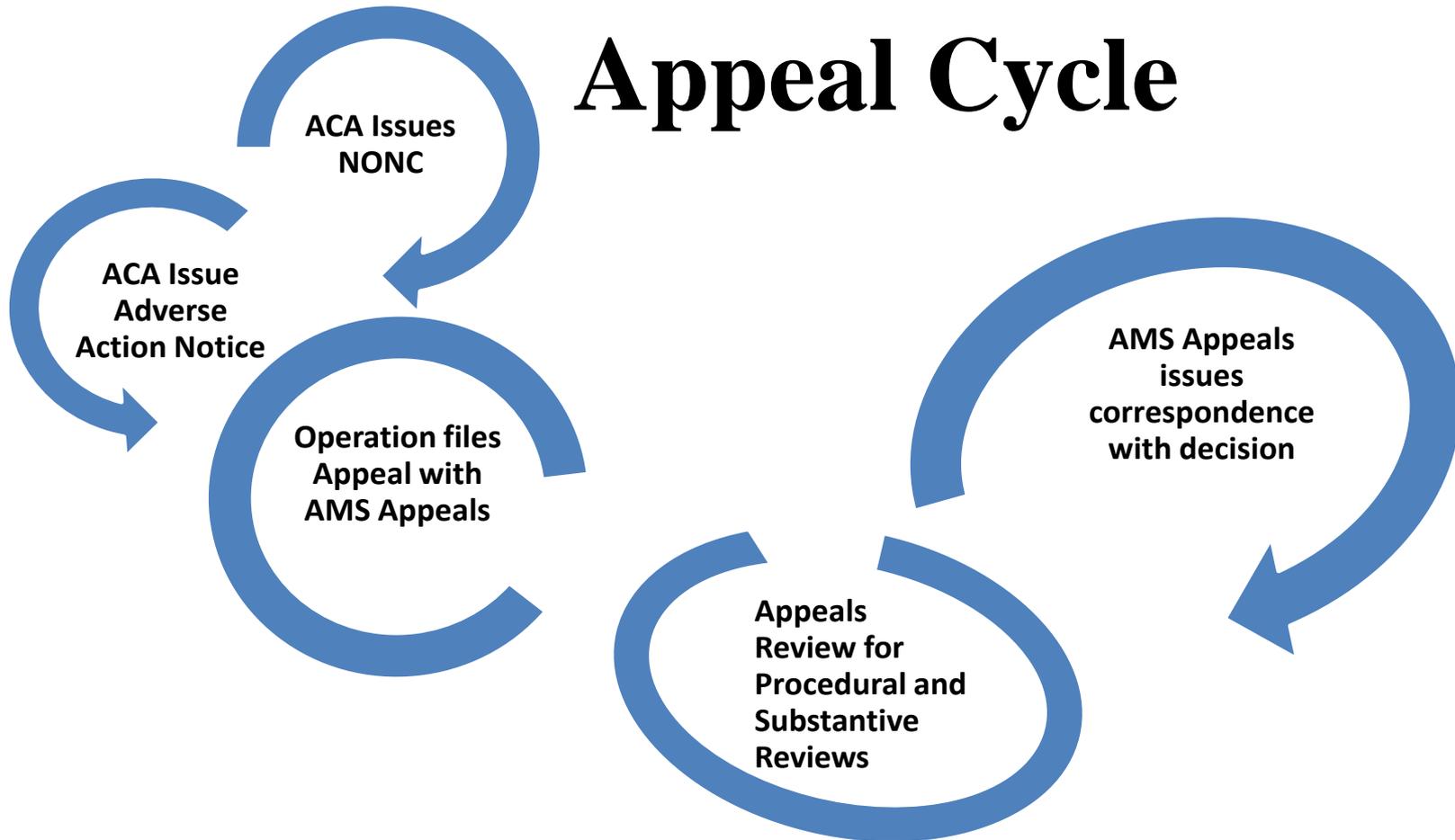


Appeal Cycle

- ACA issues Notice of Noncompliance,
- ACA issues an adverse action,
- Operation files an Appeal to the AMS Administrator c/o the NOP Appeals Team, or the SOP,
- Appeal Review,
 - Procedural Review,
 - Substantive Review,
- Correspondence with Decision.



Appeal Cycle





Procedural Review

- Does the Appeal Comply with § 205.681?
 - Is the Appeal timely? § 205.681(c)
 - Is a copy of ACA letter included? § 205.681(d)(3)
 - Does the Appeal Address the noncompliance(s)?
§ 205.681(d)(3)
 - Did the ACA issue the adverse action in
accordance with the regulations? § 205.662



Procedural Review

§ 205.662 Noncompliance procedure for certified operations.

(c) *Proposed suspension or revocation.* The notification of proposed suspension or revocation of certification shall state:

- (1) The reasons for the proposed suspension or revocation;
- (2) The proposed effective date of such suspension or revocation;
- (3) The impact of a suspension or revocation on future eligibility for certification; and
- (4) The right to request mediation pursuant to §205.663 or to file an appeal pursuant to §205.681.



Procedural Review

§ 205.405 Denial of certification.

(d) A notice of denial of certification **must state the reason(s) for denial** and the applicant's right to:

- (1) Reapply for certification; or
- (2) Request mediation
- (3) File an appeal of the denial of certification pursuant to §205.681 or, if applicable, pursuant to a State organic program.



Procedural Review

§ 205.665 Noncompliance procedure for certifying agents.

(c) *Proposed suspension or revocation.* The notification of proposed suspension or revocation of accreditation shall state:

- (1) The reasons for the proposed suspension or revocation;
- (2) The proposed effective date of the suspension or revocation;
- (3) The impact of a suspension or revocation on future eligibility for accreditation; and
- (4) The right to file an appeal pursuant to §205.681.



Procedural Review

- Does the appeal meet the procedural requirements?
 - Yes? [Appeal Acknowledgement](#) Letter Issued
 - No? Appeal Dismissed
 - Example: [Skidmore Cattle & Grain Co.](#)
 - After dismissal the operation has no further appeal rights.
 - Did the Adverse Action letters meet the procedural requirements of the NOP regulations?
 - Yes? Appeal Acknowledgement Letter Issued
 - No? Appeal may be sustained.



Substantive Review

- Factors for consideration:
 - (i) Is the noncompliance(s) substantiated by the preponderance of evidence?
 - (ii) Are all violations listed in the proposed action appealed?
 - (iii) Are there violations which were omitted from the proposed action, but subject to inclusion in an appeal decision?
 - (iv) Is there evidence that the violation(s) was committed knowingly or willfully?
 - (v) Has precedent been set in a similar situation?



Appeal Decisions and Resolutions

- **Dismissed/ Closed without a Decision** – If the appellant or ACA failed to follow the procedural requirements of the regulations. Or, if it is later determined the ACA issued the proposed adverse action in error.
- **Denied** – If the preponderance of evidence demonstrates noncompliance with the regulations. In denying the appeal, the Administrator may elect to reduce or extend the scope of the proposed adverse action, and indicate whether there are grounds to pursue civil or criminal penalties.
- **Sustained** - If the proposed adverse action does not comply with the procedural requirements, the appeal may be sustained.
- Examples: See the NOP's [E-Reading Room](#)



Appeal Decisions and Resolutions

- After the Appeal is Denied/Sustained:
 - Transmittal Letter
 - Appeal Decision
 - Waiver of Hearing
- Once an appeal has been denied, the Appellant may:
 - Sign the waiver of hearing and accept the Administrator's Decision,
 - Request a formal administrative hearing, or
 - Failure to respond is deemed a waiver of hearing.
- Hearing Requested? → File referred to NOP for formal administrative proceedings pursuant to U.S. Department of Agriculture's Uniform Rules of Practice, 7 CFR part 1, Subpart H.



Contact Information

– Adverse Action Letters:

NOPACAAdverseAction@ams.usda.gov

– Appeals: 202-720-6766 or

NOPAppeals@ams.usda.gov

– Lynnea Schurkamp: 202-720-4932 or

Lynnea.Schurkamp@ams.usda.gov

– Denise Sylvester: 202-690-3045 or

Denise.Sylvester@ams.usda.gov

– Mailing Address: 1400 Independence Ave. SW,

Room 1114-S, STOP 0203, Washington, DC 20250



References

- NOP Website- www.ams.usda.gov/nop
 - NOP Reading Room
 - NOP Program Handbook
 - Appeals Procedures
 - Appeals Brochures
- NOP Regulations