



National Organic Program Mediation Training

January 16, 2013

USDA Agricultural Marketing Service
National Organic Program



Today's Learning Objectives



How to use mediation to reach a Settlement Agreement with clients that satisfies the interests of both the ACA and the operation, and also conforms to OFPA and the USDA organic regulations.



Roadmap



1. Applicable regulations
2. ACA roles and responsibilities
3. Overview of mediation
4. Process for reaching Settlement Agreement
5. Settlement Agreements
6. Questions

USDA Organic Regulations



- **§ 205.662(c)(4) and § 205.405(d)(2)** – ACAs must provide operations with the right to request mediation when issuing proposed suspension/revocation.
- **§ 205.663** – a denial of certification or proposed suspension/revocation may be mediated on request by applicant or operation and acceptance by ACA.
 - Qualified mediator mutually agreed upon
 - Reach agreement within 30 days of mediation session
 - Comply with OFPA and regulations
 - NOP may review agreements and reject any that do not comply with regulations

Paths to Dispute Resolution



Informal Settlement

- ACAs can settle disputes informally with operations

Formal Mediation

- Confidential
- Quick / effective
- Voluntary
- Focus on preserving relationships

Settlement Agreement

What Mediation is Not



**Mediation
is NOT**

- a legal proceeding or a determination of fault
- a waiver of other rights (ex. formal appeals process)

Mediation Process – STEP 1



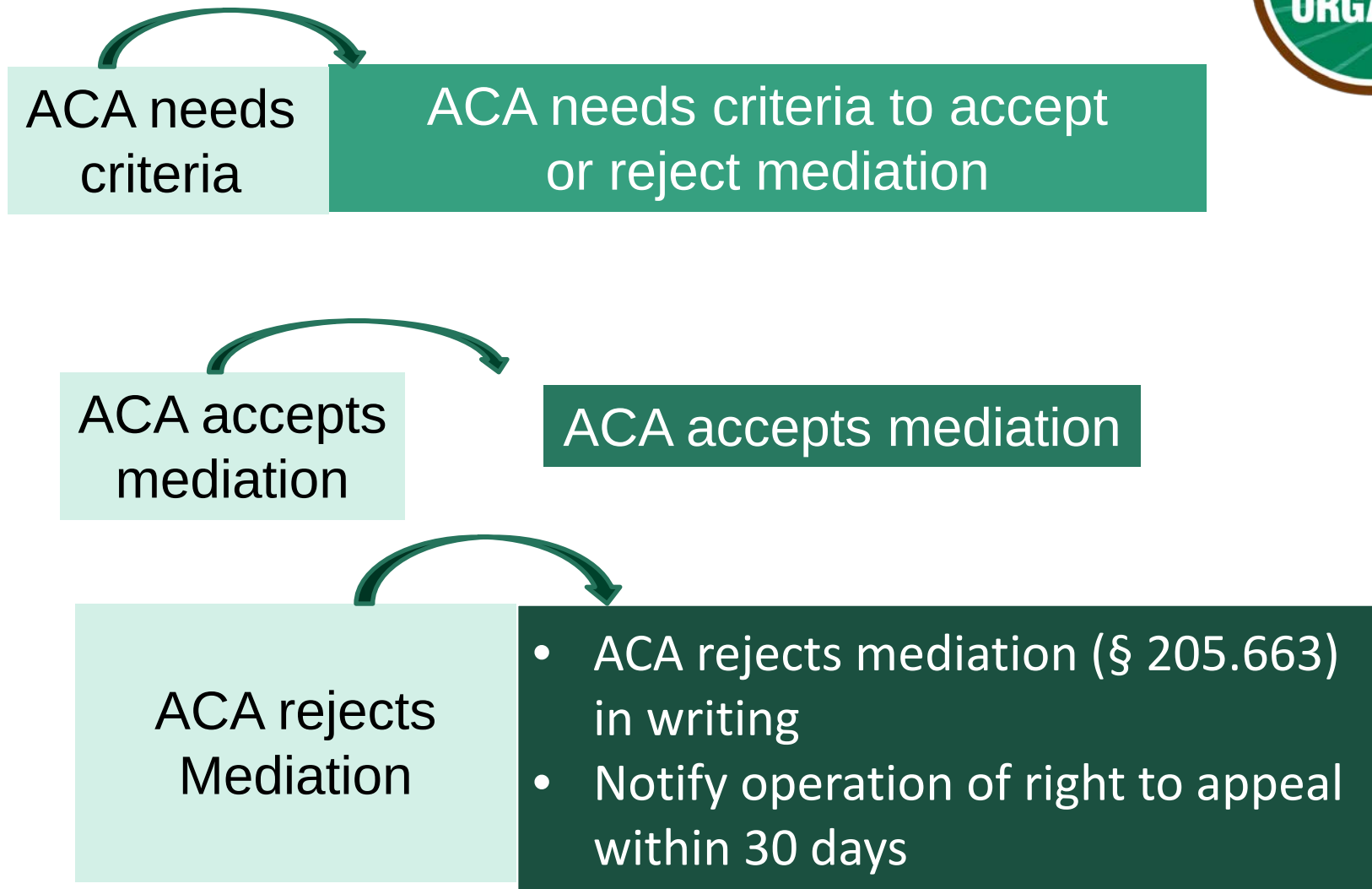
ACA issues an
adverse action

- ACA denies certification to applicant
- ACA issues Proposed Suspension or Proposed Revocation to certified operation

Operation
requests
mediation

- Operation requests mediation
- In writing to ACA

Mediation Process – STEP 2



Mediation Process – STEP 3



Mediation Logistics

- Mediator
- Time
- Location
- In-person or video teleconference
- Fees and payment

ACA internal procedures

Mediation Process – STEP 4



Mediation (§ 205.663)

- Qualified mediator
- Mediator must be mutually agreed upon by both parties
- Must reach agreement within 30 days of mediation session

Appeal Rights

If unsuccessful, then operation can appeal initial adverse action within 30 days of termination of mediation

Mediation Process – STEP 5



NOP may review and reject Settlement Agreements (§ 205.663)

- ACA regulatory assessment for compliance

NOP will review Settlement Agreements during ACA audits

ACA may submit Settlement Agreement to NOP with request for review

What is a Settlement Agreement?



Contractual document by which two parties mutually agree to resolve a dispute, e.g. proposed suspension



- Signed by both parties
- Legally binding

What to Put in a Settlement Agreement



Best Practices:

- Terms: must comply with USDA organic regulations and be mutually agreed upon
 - Actor
 - Activity
 - Outcome
 - Time Frame
- Examples of terms: additional inspections; testing at operator's expense

What to Put in a Settlement Agreement



Best Practices (continued):

- Consequences for not abiding by the terms of Settlement Agreement
- Effective date
 - Specifying the date on which the terms will take effect
- Signatures
 - By authorized representatives of both ACA and certified operation

Agreement Template: Introduction



[Insert letterhead of USDA-approved Accredited Certifying Agent (“ACA”)]

THIS SETTLEMENT AGREEMENT is entered into by [insert name of ACA] and [insert name of operator], and any person responsibly connected with [insert name of operator].

[Insert name of ACA] and [insert name of operator] have decided to compromise and settle the issues among them related to alleged violations of the Organic Foods Production Act of 1990 (7 U.S.C. §§ 6501 et seq.) (OFPA), and regulations promulgated thereunder (7 C.F.R. §§ 205 et seq.).

Agreement Template: Terms



Accordingly, the parties agree to the following:

1. [Insert name of ACA] agrees not to [describe original proposed adverse action] charge [insert name of operator] with [sample language: *alleged violations of the OFPA and the regulations for any actions disclosed by the investigation*] which gave rise to this agreement.
2. [Insert name of operator] agrees to the following:
 - A. [Insert name of operator] agrees that failure to comply with the settlement agreement shall automatically void paragraph 1 above, and that [insert name of ACA] may thereafter institute the [describe original proposed adverse action] against [insert name of operator], refer the matter to the National Organic Program (“NOP”), and pursue any and all remedies available under the OFPA and the regulations.
 - B. [Insert name of operator] agrees to [describe corrective action(s), outcomes and time frame].

Agreement Template: Signature



This agreement will become effective upon [date].

_____ Date: _____

[Insert name of authorized operator representative]

[Insert title of above-named representative]

[Insert name of operator]

_____ Date: _____

[Insert name of authorized ACA representative]

[Insert title of above-named representative]

[Insert name of ACA]

Summary



- Mediation-
Fast and effective process
- Settlement Agreement-
 - o Legally binding
 - o Terms must comply with USDA organic regulations.
- Questions?

