

Section 8.11 Requesting Reconsideration of Certification Decisions

If you disagree with a certification decision, you have several options for expressing your disagreement and seeking a reconsideration of your situation, depending on your stage in the certification process. The procedures for these options—(a) rebuttal, (b) request for mediation, or (c) appeal to the NOP—are detailed in this section.

PCO Document Received	Procedure to Use
If you have received this type of PCO document...	You may request reconsideration of certification decisions in the document through...
Certification Memo	Rebuttal
Certification Report	Rebuttal
Unmet Conditions Letter	Rebuttal
Notification of Noncompliance	Rebuttal
Denial of Certification	Mediation or Appeal
Notice of Proposed Suspension of Certification	Mediation or Appeal
Notice of Proposed Revocation of Certification	Mediation or Appeal

(a) Rebuttal Procedures

If you disagree with a certification decision communicated in a certification memo or report, unmet conditions letter or notification of noncompliance, you may write to us and let us know why. This is called a “rebuttal.” The National Organic Standards require that applicants for certification who are denied certification and certified clients who are issued notifications of noncompliance have the opportunity to rebut the decision. (7 CFR §205.405(b)(3) and §205.662(a) and (b)).

When PCO notifies a certified client or applicant of a noncompliance through a certification memo or report or notification of noncompliance, the written report establishes a date by which the certified operation must correct each noncompliance or rebut the noncompliance.

If the client disagrees with PCO’s decision, the rebuttal must be submitted in writing to PCO’s Certification Director within the specified timeframe and must provide reasoning for why the applicant or client believes the noncompliance to be invalid. Written rebuttals may be submitted in person, by mail, fax, or email. You may write your position and explanation on the Certification Report and submit it as your rebuttal. Include any supporting documents or relevant information.

The Certification Director will reply to the client in writing confirming receipt of the rebuttal. Within 15 days of receipt of the rebuttal, the Certification Review Team (CRT) will consider the rebuttal and reply to the client or applicant in writing. If the client or applicant disagrees with the CRT decision, he/she may request a review by the Certification Committee by sending a written request to PCO within 15 days, c/o Certification Committee Coordinator. The Certification

Committee will review the request, make a decision, and communicate that decision in writing to the client or applicant within 30 days of receiving the request.

If the CRT and/or Certification Committee agrees with PCO's original decision on certification, you will receive a written notice in response to the rebuttal that will give a deadline by which you may request mediation or file an appeal. The stated deadline will allow the required 30 days for filing an appeal.

If the CRT and/or Certification Committee agrees wholly with your position (or agrees in part), you will receive a letter informing you that the issue is considered resolved and that PCO may proceed with the certification process. (When the CRT and/or Certification Committee agrees only in part, you will also receive a notice as described in the previous paragraph for the part with which they disagree.)

PCO is not permitted to issue a Notification of Proposed Suspension or Revocation if the rebuttal is pending (in other words, if the time periods allowed for response have not passed, or if a certified operation has requested mediation pursuant to §205.663 or an appeal pursuant to §205.681).

(b) Mediation Procedures

When an applicant is denied certification or a certified client is sent a proposed suspension or revocation of certification, the applicant or certified client may request a review of PCO's decision through mediation (under §205.663). The request for mediation must be made in writing to PCO and must provide reasoning for why the client or applicant disagrees with the denial or suspension or revocation. Such a request must be received in the PCO office (along with any supporting documents or relevant information) within 15 days after the date on the Notice of Proposed Suspension or Revocation.

PCO may accept or reject the request for mediation. The certification director will consider the applicant/client's reasoning when determining whether to accept mediation, as well as other factors such as whether the noncompliance was a noncorrectible noncompliance, a willfull violation of the rule, or a financial dispute. PCO will notify the client of its decision within 15 days of receiving the request.

If PCO rejects the request for mediation, it will provide written notification that also advises the applicant or certified operation of its right to request an appeal with the State organic program (if applicable) or NOP (§205.681) within 30 days of the date of the written notification of rejection of request for mediation.

If PCO accepts the request for mediation, the mediation will be conducted by a qualified mediator mutually agreed upon by PCO and the applicant or certified operation. The applicant or certified operation and PCO will share equally the costs of the mediation services.

The parties to the mediation shall have no more than 30 days to agree on a mediator and to reach an agreement following a mediation session. If mediation is unsuccessful, the applicant for certification or certified operation shall have 30 days from termination of mediation to appeal the certifying agent's decision pursuant to §205.681.

Any agreement reached during or as a result of the mediation process must be in compliance with the Act and these regulations. The Secretary may review any mediated agreement for conformity to the Act and these regulations and may reject any agreement or provision not in conformance with the Act or these regulations (§205.663).

(c) Appeals Procedures (*this section has not changed from 4-27-05 version*)

An applicant for certification may appeal a certifying agent's notice of denial of certification, and a certified operation may appeal a certifying agent's notification of proposed suspension or revocation of certification to the Administrator, *Except*, That, when the applicant or certified operation is subject to an approved State organic program the appeal must be made to the State organic program which will carry out the appeal pursuant to the State organic program's appeal procedures approved by the Secretary.¹

1. If the Administrator or State organic program sustains a certification applicant's or certified operation's appeal of a certifying agent's decision, the applicant will be issued organic certification, or a certified operation will continue its certification, as applicable to the operation. The act of sustaining the appeal shall not be an adverse action subject to appeal by the affected certifying agent.
2. If the Administrator or State organic program denies an appeal, a formal administrative proceeding will be initiated to deny, suspend, or revoke the certification. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Uniform Rules of Practice or the State organic program's rules of procedure.

Filing period. An appeal of a noncompliance decision must be filed within the time period provided in the letter of notification or within 30 days from receipt of the notification, whichever occurs later. The appeal will be considered "filed" on the date received by the Administrator or by the State organic program. A decision to deny, suspend, or revoke certification will become final and nonappealable unless the decision is appealed in a timely manner.

Where and what to file.

1. Appeals to the Administrator must be filed in writing and addressed to Administrator, USDA, AMS, c/o NOP Appeals Staff, STOP 0203, Room 302-Annex, 1400 Independence Ave., SW, Washington, DC 20250.
2. For hand delivery carriers, send your appeal to Administrator, USDA, AMS, c/o NOP Appeals Staff, 300 12th Street, SW, Room 302-Annex, Washington, DC 20250.
3. Appeals to the State organic program must be filed in writing to the address and person identified in the letter of notification.
4. All 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.

For information on resolving disputes that do not involve certification status, see Part 17: Complaints and Disputes, pg. 36.

¹ 7 CFR § 205.681 Appeals