



**Accredited Certifiers
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Utilizing Mediation and Settlement Agreements

Questions and Answers
Resources

Version # 3
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Utilizing Mediation and Settlement Agreements

Table of Contents

Topic	Page
Background Information	1
The Adverse Action Process	3
Questions and Answers	4
Mediation and Settlement Agreement Resources	10
Settlement Agreement Template A	11
Settlement Agreement Template B	12
Settlement Agreement Template C	16
Acceptance of Mediation Request & Proposed Settlement Agreement or Mediation Scheduling Template	18
Mediation Accepted and Settlement Agreement Template	21
Sample Mediation FAQ	23

Utilizing Mediation & Settlement Agreements

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Background

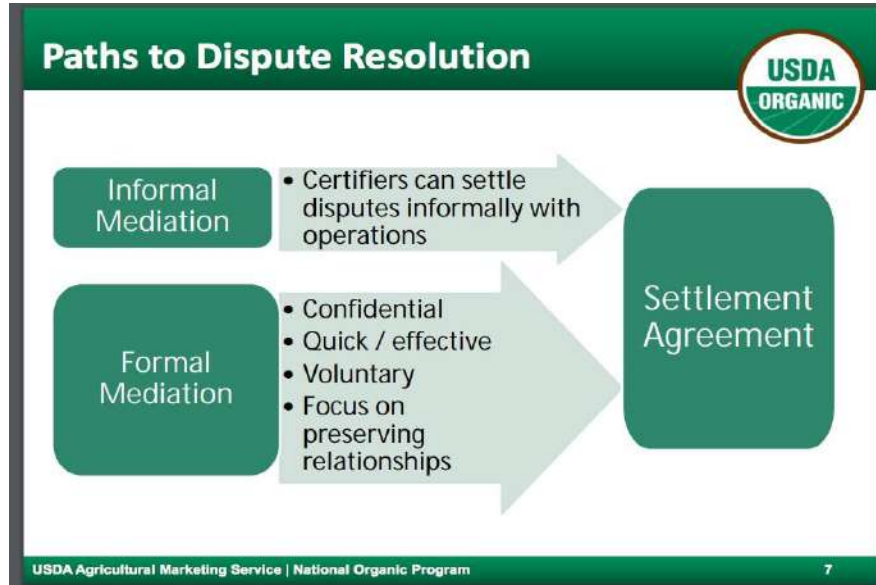
An ACA Working Group convened in 2016 to discuss the topic of Mediation and Settlement Agreements and the many questions regarding implementation of these practices in the noncompliance process. The group noted that individual state regulations may have specific requirements for the mediation process in that state.

The National Organic Program (NOP) encourages the use of mediation and settlement agreements by certifiers as an alternative to having operations appeal to the NOP or to facilitate a quicker outcome. Certification agencies also recognize that the suspension process utilizes extensive staff labor, and in an effort to reduce the number of suspensions, other means can be used to conclude the noncompliance process, such as mediation leading to a settlement agreement.

The group determined that since certification agencies have similar but different systems that are currently working for their agencies, discussing of areas in question and providing information on the experiences of others would be the most beneficial outcome. The Q & A format is used. In addition, the [Mediation and Settlement Agreement Resources](#) section includes tools and resources to assist agencies with this process, including templates for Settlement Agreements and a sample FAQ document for certified operations.

This document was originally compiled by an ACA Working Group in July of 2016, and it has undergone two rounds of NOP feedback and successive revision since then. Initial changes (2017) included clarification that mediation must be requested in writing, even for noncompliances that are simply related to late paperwork updates or payment of fees. Revisions also clarified what is meant by formal and informal mediation. The working group had originally described informal mediation as suitable for addressing administrative issues and low-level organic integrity issues, available at the verbal request of the operator. Formal mediation was described as the most suitable pathway for addressing major areas of noncompliance, requiring a request from the client in writing. However, the NOP has clarified that formal mediation simply refers to mediation activity using an outside mediator; there are no other stipulations. Conversely, informal mediation does not use an outside mediator. Other circumstances related to the nature of the noncompliance, or the methods by which the mediation is conducted, do not have an effect on whether the mediation is classified as formal or informal.

This two-level mediation process is supported by NOP Training for certifiers:



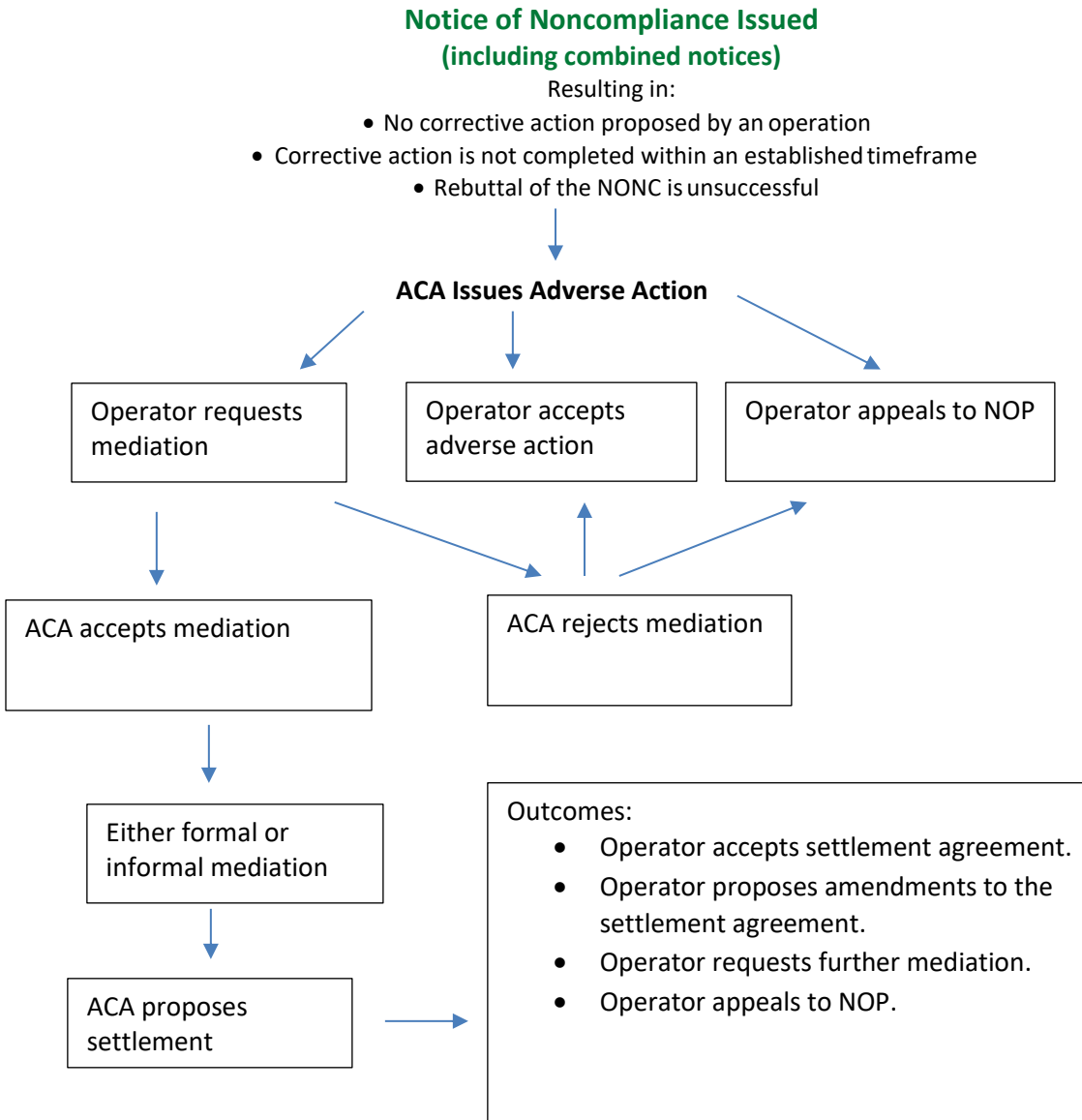
NOP Training Slide 2014, *Appeals Update*

The original working group also noted that state certification programs, while they may have the assistance of their legal department, may also have more rigid policies regarding the mediation process and may not have the flexibility of choosing between formal and informal mediation. Mediation processes may begin informally and proceed to formal mediation if a settlement agreement cannot be reached using informal mediation. If mediation is offered by the certifier, they must proceed to formal mediation if requested by the operator. Mediation may be terminated by the certifier if the operator refuses to agree to a compliant course of action or if the operator becomes otherwise uncooperative. In general, as long as the mediation process is moving forward and progress is being made, then the process should continue. If certifiers see barriers to this process, they should contact their Accreditation Manager to make sure next steps are acceptable.

Most recent revisions (2018) clarify and emphasize that settlement agreements are an outcome of the mediation process and that a settlement agreement is not to be offered before mediation is requested. Additional revisions related to timelines and procedures are included in this updated version.

The Questions and Answers that follow are based upon the Adverse Action process as depicted below.

The Adverse Action Process



Questions & Answers

A. What can a mediation request look like?

1) Can a request for mediation be verbal?

Not solely. Per §205.663, mediation requires a written request to the certifier. In the instance of an informal mediation, a written request is still required. It is not sufficient to accept a verbal request and then document the outcome, regardless of the nature of the Noncompliance. It can be acceptable for certifiers to send the operator a letter with a checkbox where the request is documented. However, these forms need to be legally defensible; it is recommended that certifiers send draft forms to NOP prior to use for confirmation of acceptability.

An ACA's internal policies should specify the methods by which written requests for mediation can be documented (i.e., email, fax, letter from operator, form letter with checkbox or other).

2) If the operator simply submits missing information, can this be interpreted as a mediation request?

No. The client should be contacted to determine whether they understand the mediation or appeal options to address the adverse action. Requests for mediation must be made in writing. (See question # A1.) If a request for mediation is not clear, the certifier should seek additional confirmation in writing to clarify that mediation is being requested.

B. What can an informal mediation look like?

1) Can we proactively offer a settlement agreement ahead of receiving a mediation request?

The settlement agreement is an outcome of mediation. ACAs cannot send the operator a settlement agreement that includes a statement such as, "by signing and returning this agreement you are agreeing to the mediation requirements. However, ACAs could include a statement in the Proposed Suspension that says, "Mark this box if you want to engage in mediation."

ACAs should only offer a settlement agreement after receiving a mediation request.

2) Can informal mediation be conducted on the phone and/or by e-mail?

While the mediation can be conducted on the phone and/or by email, the final settlement must be agreed to by both parties and documented in writing.

3) Should ACAs document the details of the mediation session?

All the details of the mediation process should be documented, including the dates of phone calls or emails, and included with the settlement agreement, or in the event that the mediation failed, the communication sent to the client identifying next options.

C. Process Questions

1) Should we opt for informal or formal mediation?

The internal policies of the ACA should specify criteria for accepting/rejecting mediation and whether the mediation would be informal or formal. The determination of whether the mediation is informal or formal is generally made on a case-by-case basis; considerations could include logistics, the likelihood of reaching a satisfactory outcome, and the costs associated with each type.

Some examples of issues that may be suited for informal mediation include:

- Not submitting updated OSP by deadline
- Late payment of fees
- Requests for additional information from certifier not addressed by client

Some examples of issues that may be better suited for a more formal mediation process include:

- Issues involving organic integrity
- Repeating noncompliances for the same issue
- Issues of communication or interpersonal conflicts between certifier and operator

2) If informal mediation is not working what are the options?

- Keep talking
- Client can request formal mediation involving a third party
- Client can abandon mediation efforts and accept the original adverse action, or appeal to NOP
- Certifier can end mediation process (in cases where clients is unresponsive or refuses to come into compliance)

3) If we have accepted informal mediation, can we refuse a request for formal mediation?

The internal policies of the ACA should specify criteria for rejecting mediation. If the ACA determines that an operator is unwilling to comply with the National Organic Standards, they can reject a formal mediation request. Otherwise, requests for formal mediation should be accepted by the certifier.

4) How might we assess fees for mediation/settlement work?

Any fees to be charged for the mediation/settlement agreement process should be

outlined in the mediation acceptance letter. The settlement agreement should include details of any fees to be charged for follow up activities, such as compliance inspections or testing.

The determination of whether to charge for the mediation/settlement process varies from agency to agency. Some assess an hourly administrative fee, travel expenses, and mediator fees (generally for outside third party mediator).

5) Can an updated certificate be issued while continuing with the noncompliance, mediation, settlement agreement process?

Yes. Certifiers are required to continue providing certification services during the mediation and appeals process.

6) What tools may be used to avoid going to Notice of Proposed Suspension?

- ~ Additional phone contact (multiple) by agency staff; explain the options in more detail, including the impact of ignoring the noncompliance
- ~ Additional inspection to obtain the information, with client covering costs
- ~ Remind clients if they have a noncompliance from last year that is pending inspector verification this year

7) What is the time line involved with Mediation?

The Regulation has no set time line between agreeing to mediation and starting the mediation; however, in the interest of customer service certifiers may wish to establish an internal policy for this.

Applicants or certified operations filing an appeal must do so within 30 days from the date of the written notification of rejection of the request for mediation.

There is also no time line specified for the actual length of the mediation process once mediation has started. In general, the process should continue as long as the operator is responsive and progress is being made.

Following the mediation and offer of the final settlement agreement, the operator has not more than 30 days to sign and execute the settlement agreement.

If mediation is unsuccessful, the applicant or certified operation has 30 days from the termination of mediation to appeal.

8) What if an operation surrenders in the midst of the mediation process?

An operation can voluntarily surrender at any time; if surrender is chosen after proposing an adverse action, ACAs must indicate to the operation that the adverse action process must continue to conclusion. The adverse action process could result in the operation being suspended even though they have surrendered. The act of the suspension would ensure that the operation would be required to correct the noncompliances and proceed through the reinstatement process.

For issues concerning operators not submitting updated OSPs or paying certification fees, some ACAs have issued an adverse action, which would permit mediation or appeal, and also issued a settlement agreement that includes surrender. Surrender must be voluntary; operators would be required to indicate they wish to surrender.

D. What constitutes a qualified mediator?

Qualified Mediator is not defined under the NOP. The only consideration identified in §205.663 is that the mediator be mutually agreed upon by the parties to the mediation. Merriam Webster definition of mediator: one that mediates between parties at variance.

ACA staff can serve as mediators in informal mediation processes. A staff person from another agency could serve as a mediator in a formal mediation process. Ideally, agency staff acting as a mediator would have some background and training in mediation process. There are many online mediator training courses, plus in person training programs. ACAs are identifying specific staff to take mediator training courses. (See *Resources* at end)

Each ACA must set criteria to determine what constitutes a conflict of interest in a mediation between agency staff and operators. Some examples could be:

- Familiarity with the file
- Previous reviewer interaction with the client
- Previous inspection of the client

E. Contents of Settlement Agreements

A portion of the information in this section is based upon the National Organic Program Certifier Training Module: [Appeals and Settlement Agreement Updates, 2015](#)

1) What information should be contained in the settlement agreement?

- Name of certifier, operator, and responsibly connected parties
- Address of the certified operation.
- Corrective actions and/or other terms the operator agrees to
- The outcome if the terms are met (i.e. certifier agrees to close proposed adverse action)
- Timeframe for implementation of corrective actions
- Consequences to the operator if terms are not met in the prescribed timeframe
- Effective date of the settlement agreement
- Signatures of the certifier and operator

2) How prescriptive can settlement agreements be?

Settlement agreements by their nature are generally prescriptive. They may provide specific actions agreed to by the operator with aggressive timeframes to demonstrate compliance.

Some examples of terms that may be included are:

- Additional residue testing over a set period of time, potentially at the operation's expense
- Shorter suspension time than originally offered under certain circumstances or a suspension to mitigate a proposed revocation
- Additional unannounced inspections over a set timeframe

Some examples of specific actions including timeframes are:

- Provide specific elements of a revised recordkeeping system that demonstrates compliance
- Provide specific subset of records at a future time which demonstrate compliance
- Adjust a practice and provide evidence that practice is implemented to bring an operation into compliance
- Agree to notify certifier within a specified timeframe if a specific element of an OSP changes (beyond already required notifications)

3) Must the settlement document be signed by the operator?

Yes, it must be signed.

4) Must a settlement always include a change to an organic plan to avoid recurrence of the issue, or can "mea culpa" be an adequate correction?

The operation must demonstrate the noncompliance has been corrected.

Simple acknowledgment and correction of error (e.g. lack of payment, late submission of OSP) is not adequate. Since there was a system failure, they would need to issue a corrective plan such as, "I will put it on my calendar to remember."

5) What is the effect of a failure to comply with the settlement agreement?

Failure to comply with a settlement agreement results in a termination of the settlement agreement, with a reissuing of the adverse action. The operator retains the right to appeal to NOP.

Mediation and Settlement Agreement Resources

Training Programs for Mediators (this is not an all-inclusive list)

The Free Online Mediation Training Course <http://www.freemediationcourse.com/>

Universal Class, on-line mediation course
<https://www.universalclass.com/i/course/mediation-training.htm>

Mediation Training Institute International: <http://www.mediationworks.com/mti/>

American Institute of Mediation: <http://www.americaninstituteofmediation.com/pg37.cfm>

NOP Training Presentations

2016

<https://www.ams.usda.gov/sites/default/files/media/Resolving%20Proposed%20Suspension%20and%20Revocation.pdf>

2015

<https://www.ams.usda.gov/sites/default/files/media/NOP%20Appeals%20and%20Settlement%20Agreement%20Updates%20Training.pdf>

See slides 11 and 12

2014

<https://www.ams.usda.gov/sites/default/files/media/NOP%20Appeals%20Update%20Training%202014.pdf>

Slide 6 is the same as that slide from 2013

2013

<https://www.ams.usda.gov/sites/default/files/media/NOP%20Settlement%20and%20Mediation%20Training%202013.pdf>

NOP Noncompliance and Adverse Action Flow Chart

<https://www.ams.usda.gov/sites/default/files/media/NCandAdvActionFlowChart.pdf>

Settlement Agreements

Settlement agreements composed by the NOP during enforcement actions can be viewed on the USDA/AMS Organic Enforcement webpage:

<https://www.ams.usda.gov/services/enforcement/organic>

Mediation Providers (not an all inclusive list)

USDA agencies offer mediation services in many states. The link below identifies states with current agricultural mediation services programs:

http://aces.nmsu.edu/ces/nmamp/certified-states.html#anchor_17091

Settlement Agreement Templates

Settlement Agreement Template A

This settlement agreement is entered into by [insert name of ACA] and [insert name and address of operator and any individual person(s) responsibly connected to the operator], and any other 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 Food Production Act of 1990 (7 U.S.C. §§ 6501 et seq) (OFPA), and regulations promulgated thereunder (7 C.F.R. §§ 205 et seq).

Accordingly, the parties agree to the following:

1. [Insert name of ACA] agrees not to [describe original proposed adverse action] charging [insert name of operator] with [sample language: *alleged violations of the regulations for any actions disclosed by the investigation*] which gave rise to this agreement.
2. [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.
3. [insert name of operator] agrees to [describe corrective action(s), outcomes and time frame].

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]

Settlement Agreement Template B (Might be more than what is required for some certifiers who are not State Departments of Agriculture)

LETTERHEAD

**USDA NATIONAL ORGANIC PROGRAM
SETTLEMENT AGREEMENT**

In the Matter of the Organic Certification of:

Organic Certification # XXX

NAME

ADDRESS

WA State UBI #: XXXXXX

NAME County

On DATE [Name of Certifier] NAME a Notice of Proposed Suspension of Organic Certification, pursuant to National Organic Standards (NOS) 7 CFR Part 205.662(c). The Notice of Proposed Suspension was issued for LIST ISSUES. This action violated the following standards:

- NOS 205.XXX
- NOS 205.XXX

On DATE, [Name of Certifier] received a notice from NAME, owner of NAME, requesting mediation of the DATE Notice of Proposed Suspension.

The request for mediation was accepted by [Name of Certifier] in a letter dated DATE.

This settlement agreement between [Name of Certifier] and NAME is in lieu of entering into formal mediation.

The parties agree to the following:

Findings:

1. NAME applied PRODUCT NAME, a prohibited input material under the National Organic Standards, on 7.6 acres of Site 4 (SITE NAME) that were contaminated with prohibited materials.
2. The 7.6 acres of Site 4 (SITE NAME) that received the application of PRODUCT NAME are ineligible for organic status for 36 months following the application. According to records reviewed by [Name of Certifier] on DATE, the application occurred on DATE, and, therefore, the land is ineligible for organic status until DATE. The National Organic Standards prohibits selling, labeling or representing crops grown on this land prior to DATE as organic.
3. The remaining 11.6 acres of Site 4 (NAME) which did not receive an application of the prohibited material remains eligible for organic status.
4. NAME did not update their system plan and obtain approval from [Name of Certifier] prior to changing cleaning procedures used on equipment that cuts and plants both organic and conventional seed potatoes.

- a. [Name of Certifier] originally approved NAME potato seed cutting and planting cleaning procedures on DATE.
 - b. The records submitted to [Name of Certifier] on DATE indicated that seed cutter and planter cleaning procedures were modified to no longer utilize soap and a pressure washer and instead only use high pressure air.
 - c. This change was made without prior notification or approval by [Name of Certifier].
5. NAME's cleaning procedures of potato seed cutting and planting equipment were inadequate to prevent the contamination of potato seed with prohibited substances.

Requirements:

To maintain organic certification, NAME shall:

1. Submit a completed application for organic certification by the annual renewal due date (currently February 1st) every year while certified as an organic producer.
2. Submit the following to ensure that the certification renewal is complete:
 - a. Signed Operator Agreement with current business information, including the legal name and business structure. This information must match the information contained on the operation's Washington State business license.
 - b. Sales and yield information with accurate reporting of gross annual income (reported by calendar or fiscal year) and previous year yields for all crops.
 - c. Site information outlining any crop changes for each organic or transitional site.
 - d. Updated and complete Organic System Plan. This plan must identify current practices and procedures regarding all aspects of organic and transitional production and must include all material inputs that will be used. The input material list must be detailed (specific brands and/or types) and must accurately reflect the use on the farm.
 - e. Any additional information deemed necessary by the [Name of Certifier] Organic Food Program in order to evaluate compliance with the National Organic Standards.
3. Submit updates to the certification renewal prior to the implementation of any changes on the operation. Updates include, but are not limited to, changes in practices and procedures, equipment, recordkeeping systems, and input materials.
4. Develop and implement new cleaning procedures for all equipment used for both organic and conventional production. These cleaning procedures must adequately prevent the future contamination of organic seed, crops, or production sites with prohibited materials. These cleaning procedures must be submitted to the [Name of Certifier] Organic Food Program as a system plan update and must be agreed to by [Name of Certifier] prior to implementation.
5. Ensure that adequate and complete records are maintained regarding all organic crops raised by NAME pursuant to 7 CFR Part 205.103. NAME shall have all records available at each inspection. These include, but are not limited to, production records, yield records, harvest records, sales records, material application records, and any other records as appropriate to verify compliance with National Organic Standards.

6. Make a representative available for inspections. Pursuant to 7 CFR Part 205.403, all announced on site inspections will be conducted by [Name of Certifier] when an authorized representative of the operation is present. Unannounced inspections will be conducted by [Name of Certifier] during normal business and operating hours.
7. Submit to the minimum of two additional inspections over the course of the next two years, and, if necessary, in subsequent production years, which are in addition to the inspections otherwise required by regulation. [Name of Certifier] reserves the right to make inspections in addition to the two identified in this paragraph. The NAME shall compensate [Name of Certifier] for costs of all additional inspections at a rate of \$550.00 per inspection. The additional inspections will take place at [Name of Certifier]'s discretion after one week notification from NAME regarding the estimated dates for the following activities:
 - a. LIST ACTIVITIES REQUIRING NOTICE
8. Allow [Name of Certifier] field inspector access to production sites and facilities for the purposes of collecting samples for pesticide residue analysis. These samples will be collected and analyzed at [Name of Certifier]'s expense.

Other terms of this Settlement Agreement:

1. NAME, representing NAME, acknowledges that she has had an opportunity to consult with legal counsel concerning this agreement, that she is executing this agreement of her own free will, and that she fully understands and accepts the terms of this agreement.
2. This agreement contains the entire agreement of the parties and is binding upon the parties, their legal successors, representatives, agents, employees, officers, subcontractors, executors, administrators, heirs and assigns.
3. This agreement shall be subject to and governed by the laws of the state of Washington. Jurisdiction of any action arising hereunder shall be proper only in the Superior Court for Thurston County, Washington.
4. If any provision of this agreement shall be held invalid by the courts or the National Organic Program, such invalidity shall not affect the other provisions of this agreement that can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.
5. It is mutually agreed and understood that no alteration or variation of the terms of this agreement shall be valid unless made in writing and signed by the parties.
6. Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this agreement.
7. By signature below, NAME, agrees to the findings listed above and will enter into an agreement with [Name of Certifier] that will fulfill the requirements outlined for maintaining organic certification. If at any point, [Name of Certifier] determines that NAME is in violation of this agreement or the National Organic Standards, a Notice of Proposed Suspension or Revocation may be issued.

8. This agreement will terminate after NAME maintains its organic certification for three (3) continuous years from the date the agreement is signed, provided minor noncompliances are addressed with corrective measures accepted by [Name of Certifier] within the required timeframe, and, no noncompliances that are determined by [Name of Certifier] to be uncorrectable.

IN WITNESS WHEREOF, the parties have executed this agreement

NAME, NAME DATE

Name of Certifier and Title

Settlement Agreement Template C

THIS SETTLEMENT AGREEMENT is entered into by <CERTIFIER> and <NAME OF RESPONSIBLY CONNECTED PARTY(IES)>/<ENTITY NAME AND ADDRESS>.

<CERTIFIER> and <NAME OF RESPONSIBLY CONNECTED PARTIES> /<ENTITY NAME> 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 USDA organic regulations (7 C.F.R. §§205 et seq.).

On <DATE>, <CERTIFIER> issued a Notice of Proposed Suspension of organic certification pursuant to the National Organic Standards 7 C.F.R. §205.662(c) to <NAME OF RESPONSIBLY CONNECTED PARTIES> /<ENTITY NAME>.

On <DATE>, <CERTIFIER> received a request for mediation of the <DATE> Notice of Proposed Suspension from <NAME OF RESPONSIBLY CONNECTED PARTIES> /<ENTITY NAME>. The request for mediation was accepted by <CERTIFIER> on <DATE>.

This settlement agreement between <CERTIFIER> and <NAME OF RESPONSIBLY CONNECTED PARTIES> /<ENTITY NAME> is in lieu of entering into formal mediation.

Accordingly, the parties agree to the following:

Findings:

<describe findings that resulted in the NC/PS>

Requirements:

To maintain organic certification, NAME OF RESPONSIBLY CONNECTED PARTIES> /<ENTITY NAME> shall:

<describe requirements that the entity must follow>

Other terms of this Settlement Agreement:

1. NAME, representing NAME, acknowledges that he/she has had an opportunity to consult with legal counsel concerning this agreement, that he/she is executing this agreement of his/her own free will, and that he/she fully understands and accepts the terms of this agreement.
2. This agreement contains the entire agreement of the parties and is binding upon the parties, their legal successors, representatives, agents, employees, officers, subcontractors, executors, administrators, heirs and assigns.

3. If any provision of this agreement shall be held invalid by the courts or the National Organic Program, such invalidity shall not affect the other provisions of this agreement that can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.
4. It is mutually agreed and understood that no alteration or variation of the terms of this agreement shall be valid unless made in writing and signed by both parties.
5. Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this agreement.
6. By signature below, NAME, agrees to the findings listed above and will enter into an agreement with <CERTIFIER> that will fulfill the requirements outlined for maintaining organic certification. If at any point, <CERTIFIER> determines that NAME is in violation of this agreement or the National Organic Standards, your operation will return to state of proposed suspension.

IN WITNESS WHEREOF, the parties have executed this agreement

Client Signature

DATE

Client Printed Name

Certifier Representative Signature

DATE

Certifier Representative Printed Name

Acceptance of Mediation Request & Proposed Settlement Agreement or Mediation Scheduling

[DATE]

[CERTIFIED MAIL or REGISTERED EMAIL]

[FIRST NAME, LAST NAME]

[OPERATION NAME]

Operation #: [OPERATION #]

[ADDRESS]

[STATE, CITY ZIP]

[EMAIL ADDRESS]

Acceptance of Mediation Request & [Proposed Settlement Agreement OR Mediation Scheduling]

Dear [OPERATOR],

Thank you for requesting mediation with [CERTIFIER]. We accept your request for mediation. Our mediation session will address the issues described in the [SPECIFIC LETTER] letter dated [DATE OF LETTER].

Mediation Scheduling (if the purpose of this letter is to schedule formal mediation)

[We will contact you shortly to schedule the mediation session. OR We plan to conduct the mediation session over the phone by calling you at [PHONE NUMBER] at [TIME] on [DATE].] If you have a different phone number you would like us to call or need to reschedule, please contact me.

[I OR FILE REVIEWER, TITLE] will be on the call with [MEDIATOR, TITLE] serving as the mediator. We consider your participation in the mediation session your agreement to work with these [CERTIFIER] team members. Please be prepared by having the [SPECIFIC LETTER] letter dated [DATE OF LETTER], something to write with, and any questions you have for us.

We look forward to speaking with you. Please let me know if you have any questions.

Sincerely,

[AUTHOR]

[JOB TITLE, x####]

Proposed Settlement Agreement (if the purpose of this letter is to offer a settlement agreement)

We need you to carefully review the proposed *Settlement Agreement* below and decide the following:

- If you agree to the terms described in the proposed *Settlement Agreement*, complete and return the signed *Settlement Agreement* and all the items requested in it.

- If you **do not** agree to the proposed *Settlement Agreement*, you have the following options:
- Contact us to discuss the terms in the proposed *Settlement Agreement*
 - File an appeal with the NOP
 - Accept the partial suspension

Settlement Agreement between [NAME] Certification and [NAME, OPERATION NAME – CERT #]

[ADDRESS]

[STATE, CITY ZIP]

[DATE]

As an alternative to suspension and as the simplest form of mediation, we would like to offer you the opportunity to enter into the following agreement:

- 1.** I agree to send the following information to [NAME OF CERTIFIER] by **[35* DAYS FROM TODAY]**:

NOTE: DELETE the following box from the letter to be sent to the operation – it is only for your reference.

Guidance for creating settlement agreement terms

Create terms which accomplish the following:

1. Correct the cause of the noncompliance
2. Provide **documented, objective evidence** that the noncompliance was corrected
3. Prevent the reoccurrence of the noncompliance in the future
4. Provide **documented, objective evidence** of how the noncompliance will be prevented in the future
5. Describe how noncompliant product has been controlled (correcting product labels, selling and marketing product as conventional, etc.) as applicable

TERMS MAY INCLUDE (please number the terms you choose):

- Provide specific elements of a revised recordkeeping system that demonstrates compliance
 - Provide specific subset of records at a future time which demonstrate compliance
 - Adjust a practice and provide evidence that practice is implemented to bring the operation into compliance
 - Agree to notify [NAME OF CERTIFIER] within a specified timeframe if a specific element of their OSP changes (beyond already required notifications)
 - Additional residue testing or unannounced inspections over a set period of time, potentially at the operation's expense
- 2.** At my next inspection, I agree to have available for the inspector adequate and complete [information needed to verify records/etc.], demonstrating that I have met the terms listed above.

This agreement describes the terms [NAME OF CERTIFIER] determined will address this/these issue(s). In order for mediation to be considered fully successful, the next inspector will need to verify that you fulfilled

the terms of the Settlement Agreement. If the inspector is able to confirm that the terms have been met, the noncompliance(s) will be considered resolved and the proposed suspension issued to you in the *Notice of Noncompliance and Proposed Suspension* dated [DATE OF LETTER] will be closed. However, if s/he is not able to verify that all the terms have been met, you will receive notice from [NAME OF CERTIFIER] that mediation was unsuccessful and you will have 30 days from this termination of mediation to appeal the proposed suspension to the NOP.

If you agree to the terms listed above and wish to enter into this Settlement Agreement with [NAME OF CERTIFIER] please sign BOTH copies, keep one for your records, and return the other to [NAME OF CERTIFIER]. The date of your signature is the effective date of our agreement.

Printed Name

Signature

Date

This signed agreement and the requested information must be sent to [NAME OF CERTIFIER] by **[35* DAYS FROM TODAY]**.

[AUTHOR SIGNATURE]

[AUTHOR]
[JOB TITLE, x###]

Enclosure:

- (1)** Copy of this agreement

[*If agreement is being sent as a follow-up to a mediation session, make deadline 30 days from date of mediation session (NOP requirement)

Mediation Accepted and Settlement Agreement Template

Letterhead
USDA NATIONAL ORGANIC PROGRAM
MEDIATION ACCEPTED

[DATE]
FIRST CLASS AND CERTIFIED
LETTER: RETURN RECEIPT
REQUESTED

Organic Certification Number: [### – Producer/Handler, etc.]
WA State UBI Number*: [### ### ###]

County: [XXX]

[NAME]
[COMPANY]
[ADDRESS]
[CITY STATE ZIP]

Dear [NAME]:

On [DATE] the [Name of Certifier] issued your operation a [Notice of Proposed Suspension of Organic Certification (could also be combined NONC/NOPS)], pursuant to National Organic Standards (NOS) 7 CFR Part 205.662(c). The [Notice of Proposed Suspension] was issued for [explain reason for issuing NOPS.] This action violated the following standards:

- [NOS 205.XXX – Title of Section (Land Requirements, Seeds and Planting Stock Standards, etc.)]

Since the issuance of the [DATE] Notice, the following has occurred:

1. [Insert details of timeline of events (letters, requirements, operation's submissions of information & documents, etc.)]
- 2.

This notice is to inform you that the conditions we required before mediation could take place have been met, thus this is our official acceptance of your request for mediation.

Before entering into a formal mediation proceeding, however, our office would like to offer the attached Settlement Agreement in lieu of mediation. If you and [Name of Certifier] enter into this agreement, the matter of the [DATE] notice will be resolved provided that [COMPANY NAME] complies with the terms of the Settlement Agreement.

If you reject the enclosed settlement agreement, the next step is to initiate formal mediation. In this case, you must sign the enclosed Mediation Agreement and contact a qualified mediator mutually agreed upon by our agency.

Please submit to me by [4 WEEKS FROM FRIDAY] **either** the Settlement Agreement signed by you **or** the Mediation Agreement signed by you. If I receive nothing from you by close of business on [4 WEEKS

FROM FRIDAY], [Name of Certifier] will deem your inaction a rejection of mediation and will continue with enforcement of the [DATE] Notice of Proposed Suspension.

If you have any questions, I am available at [XXXX], fax [XXXX], and email: [XXXX.]

Sincerely,

[NAME]

[TITLE]

Enclosures: Settlement Agreement
 Mediation Agreement

[XX/xx]

**The WA UBI (Unified Business Identifier) number is a unique identifier assigned to all businesses in WA when they register with the state as a business entity or apply for a business license.*

Resources for finding a qualified mediator:

Washington Mediation Association: <http://www.washingtonmediation.org/>

Lawyer Referral Services: <http://www.wsba.org/atj/contact/lawref.htm>

Dispute Resolution Centers: http://www.courts.wa.gov/court_dir/?fa=court_dir.dispute

Oregon Tilth Mediation FAQ



MEDIATION FAQ

The goal of mediation is agreeable, positive outcomes for both parties.

What is mediation?

Mediation is a process by which you and Oregon Tilth can resolve a Notice of Proposed Suspension, a Notice of Proposed Revocation or a Notice of Denial. Most situations will allow you to mediate with a trained Oregon Tilth staff member by phone or in person if you wish. This is called "Informal" Mediation. In other cases it will be required that we mediate by using a third-party mediator that both sides agree on. This is called "Formal" Mediation. In both situations, mediation offers a clear process by which both parties attempt to maximize agreement and understanding of an issue in order to address a concern or unresolved situation.

Why use mediation?

The Oregon Tilth Procedures manual allows for two options once an adverse action* letter has been issued. In such cases, once an adverse action has been issued the only way to remedy the situation is by either requesting mediation or filing an appeal. * An adverse action is defined as a notice that adversely affects your certification (for instance, a Proposed Suspension or Notice of Denial, etc.).

What is the process for requesting and completing mediation?

The first step is to contact the Oregon Tilth office and formally request mediation. You will be notified whether you qualify for Informal or Formal Mediation if we accept the request to enter into mediation. In some cases, Oregon Tilth reserves the right to deny request for mediation. Upon acceptance, we will then schedule a time for you to speak with an Oregon Tilth staff mediator or for us to mediate using a third party. Both

options will result in a Settlement Agreement that will describe the actions that you and Oregon Tilth will take in order to keep you in compliance with the standards to which you are certified. This may require a short-term response to provide documentation or description of corrective actions to be taken over a period of time to resolve the issue.

What happens after a Settlement Agreement?

After the signed Settlement Agreement is received and all actions or documentation requests are received, Oregon Tilth will clear the noncompliance and continue your certification under the agreed upon terms defined in the Settlement Agreement.

Is it possible mediation might be unsuccessful?

Yes. For instance, mediation may be unsuccessful if the agreed upon terms of the Settlement Agreement are not honored and met. Additionally, if the two sides cannot come to mutually acceptable terms then mediation will not proceed to a Settlement Agreement. If mediation is unsuccessful, you will be given an additional 30 days to appeal the decision to the USDA or the Oregon Tilth adjudication committee for a situation that is not certified to the National Organic Program Standards, such as certification to the Canada Organic Regime, ACB EU or NSF305 standards.

Oregon Tilth | (503) 378-0690 | www.tilth.org