Comprehensive Mediation Guideline for USDA Organic Certification

STATUS OF REVISIONS

DATE	REV.	ED.	NOTES
08/10/2026	01	01	Adjustments and improvements implemented following training activities and discussions with the India team
09/09/2026	00	01	USDA audit NOP-2026 - AIA-2407-26

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REASON FOR DRAFTING

This procedure has been edited to manage the mediation processes required under the NOP standard.

Revision 01 of this procedure was issued following discussions with the India office staff during their one-week intensive training program at Bioagricert Italy from October 5 to 9, 2026.

FIELD OF APPLICATION

This Procedure applies to operations under USDA/NOP certification.

1. Purpose of Mediation in the Adverse Action Process

Mediation is a voluntary process available to operators when a certifier issues certain adverse actions, specifically:

- Proposed Suspension
- Proposed Revocation
- Combined Notice of Noncompliance + Proposed Suspension/Revocation
- Denial of Certification

Mediation is the process and it aims to reach a settlement agreement (desired product of that process) that:

- brings the operator into full compliance with USDA organic regulations, or
- facilitates the operator's orderly exit from organic production

2. Adverse Actions vs. Noncompliance

The following are adverse actions:

- Proposed suspension
- Proposed revocation
- Denial of certification

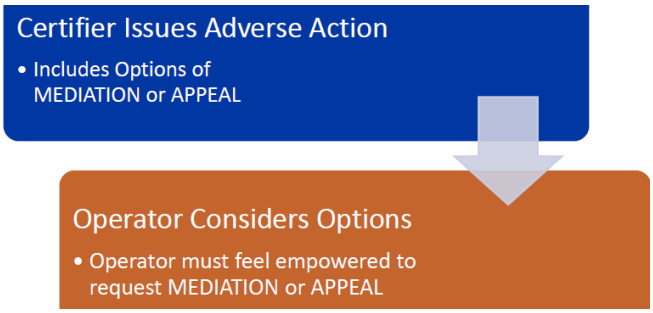
Important: a Notice of Noncompliance is NOT an adverse action. It is a preliminary step that may lead to an adverse action if unresolved.

3. Operator Rights: Mediation or Appeal

When Bioagricert issues an adverse action, it informs the operator of two options:

- Request Informal or Formal Mediation to Bioagricert
- File an Appeal directly to USDA

Operators must feel empowered to choose either option.



Any operator wishing to request mediation (formal or informal, as described in Section 4 below) shall submit a written request to Bioagricert through the office responsible for managing the operator's certification activities. The operator must request mediation in writing within 30 calendar days of receiving a denial, proposed suspension, or proposed revocation. The parties to the mediation have a maximum of 30 calendar days from the start of mediation to reach an agreement.

4. Mediation Type: formal and informal

The USDA NOP distinguishes two mediation pathways.

4.1. Informal Mediation

A flexible, collaborative, low structure process

4.1.1. Definition

Informal mediation consists of direct negotiation between certifier and operator, without a neutral mediator. It may be as simple as presenting a proposed settlement agreement and discussing terms.

4.1.2. Operator Rights During Informal Mediation

The operator must be fully free to:

- accept the proposed settlement agreement,
- reject it,
- request modifications,
- return for further informal discussion,
- request transition to formal mediation.

4.1.3. When Informal Mediation is Appropriate

- Issues are correctable.
- Both parties can negotiate constructively.
- A quick resolution is possible.

4.1.4. Goal

Same as formal mediation: a mutually agreed settlement agreement.

4.1.5. Personnel assigned to informal mediation

The reviewer assigned to the operator is responsible for conducting the informal mediation process and for recording in BAG all evidence related to the case.

Should the operator request the appointment of a different mediator, Bioagricert will review and process the request—provided that it is duly justified—and will assign a new mediator accordingly.

Upon receipt of a written mediation request from the operator, the reviewer shall:

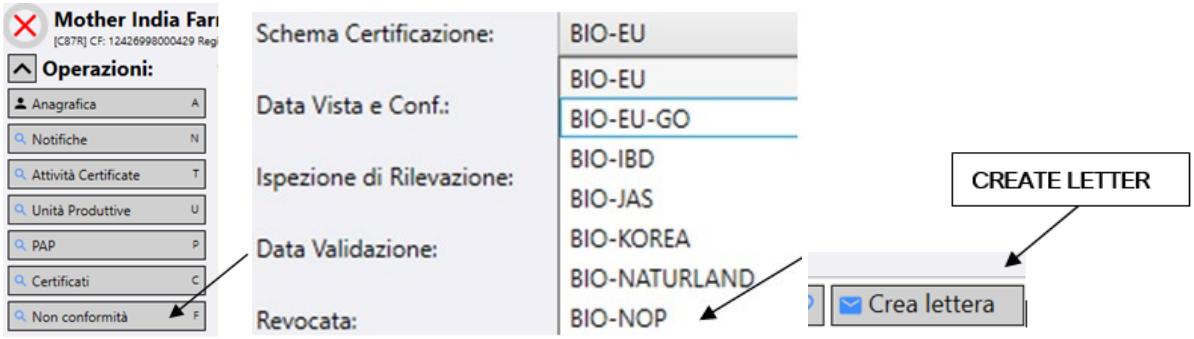
a. Protocol the email in BAG under the operator's position.
b. Create a dedicated folder named MEDIATION within the Documents section.
c. Save the mediation request also in this folder together with all subsequent correspondence exchanged with the operator.
d. Communicate[1] by email to the operator whether the mediation request has been accepted and the Settlement Agreement process may proceed, or whether the mediation request has been rejected, clearly stating the reasons for any rejection.
e. Prepare the Settlement Agreement[2] using the template available in BAG.
f. Submit the draft to the Certification Committee (Amalia.rueda@bioagricert.org) for review and approval.
g. Once the draft has been approved, send the final version to the operator by email. If the operator raises no objections and requests no changes, the terms of the Agreement shall become effective.

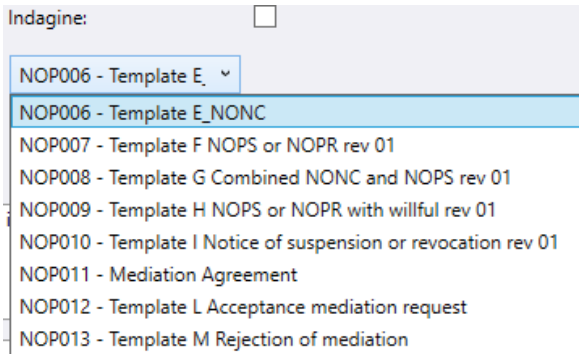
[1] **Important**: since the **Settlement Agreement must be finalized within 30 days** from the date Bioagricert receives the mediation request, this timeline includes the entire process, from the initial response to the negotiation and finalization of the Agreement.
For example, if the operator receives a response 20 days after submitting the mediation request, only 10 days remain to draft, review, negotiate, and finalize the Settlement Agreement. **Therefore, early communication with the operator is strongly recommended to ensure sufficient time for preparing and concluding the Agreement within the required timeframe**.

[2] **Important**: **in the Settlement Agreement, establish clear deadlines both for the operator** to complete the required corrective actions **and for Bioagricert** to verify their effective implementation.
For example, if the operator is required to implement a corrective action within one month from the date the Settlement Agreement is signed, the agreement may specify that Bioagricert has an additional month to verify the implementation and effectiveness of such action.
The reviewer is responsible for monitoring these deadlines, ensuring that the agreed timelines are respected, and documenting all verification activities conducted during the mediation process.

h. The parties to the mediation have a maximum of 30 calendar days from the start of mediation to reach an agreement. Any comments, objections, or requests for modification from the operator must not delay the process.
i. Monitor that all deadlines set out in the Settlement Agreement are met by both the operator and Bioagricert.
j. Save any documentation provided by the operator as evidence of the corrective actions implemented.
k. Record the verifications conducted by Bioagricert to confirm the effective implementation of such corrective actions.
l. Send the email communicating the outcome of the mediation process once it has been concluded. See following 4.1.6.

Please note: in BAG management system, under the NC section of the operator's file, the templates required for the different phases of the mediation process can be downloaded after selecting the applicable certification scheme.





4.1.6. Outcome of informal mediation

Where the informal mediation is successful and the operator has effectively implemented the required corrective actions, the reviewer shall notify the operator by email and the mediation shall be closed.

Where the informal mediation is unsuccessful, the reviewer shall notify the operator by email and the adverse action shall remain in effect. In this case, the operator still has the right to appeal directly to USDA.

4.2. Formal Mediation

A structured process with a neutral mediator.

4.2.1. Definition

Formal mediation involves a qualified mediator, mutually agreed upon by certifier and operator.

4.2.2. Required elements

The certifier must establish:

- a qualified mediator, acceptable to both parties,
- time and location of the mediation session,
- format (in-person, phone, video),

- mediation fees and payment responsibilities.

4.2.3. When Formal Mediation is appropriate

- Informal mediation fails.
- Issues are complex or contentious.
- A neutral facilitator is needed.

4.2.4. Goal

Same as informal mediation: a settlement agreement signed by both parties.

4.2.5. Criteria for FORMAL MEDIATION

Bioagricert has an established procedure, **PRO_003, for the management of formal mediations**. This procedure provides for the involvement of a Mediation Committee (CRI), which is responsible for issuing determinations on the various cases submitted. The procedure also defines the composition of the Committee, the operational modalities for conducting mediation, the applicable timelines, and all necessary instructions for the proper handling and resolution of cases.

Upon receipt of a formal mediation request, the reviewer responsible for the operator, or the relevant overseas office, shall send the request by email to francesca.cozzo@bioagricert.org (CRI Secretariat) and qualita@bioagricert.org. The CRI Secretariat will then forward the request to the Committee and initiate the formal mediation process.

The parties to the mediation have a maximum of 30 calendar days from the start of mediation to reach an agreement.

4.2.6.Outcome of informal mediation

Where the formal mediation is successful, the CRI secretariat shall notify the operator by email and the mediation shall be closed.

Where the informal mediation is unsuccessful, the CRI secretariat shall notify the operator by email and the adverse action shall remain in effect. In this case, the operator still has the right to appeal directly to USDA.

1. Criteria for Accepting or Rejecting Mediation

1.1. Criteria for saying NO

- Low likelihood of correction (repeated issue).
- No path to compliance (e.g., prohibited substance applied on all land).
- Submission beyond the 30-day deadline.

5.2 Criteria for Saying YES

- Corrective actions could resolve the issue.
- Additional oversight could ensure compliance.

2. Correct and incorrect responses to Mediation requests

Example Scenario

Operator receives a Proposed Suspension for failing to provide OSP update and fees.

Incorrect Response

“We will accept mediation if you send your OSP update and payment.”

Conditional acceptance is prohibited.

Acceptable Response

“We accept your request for mediation. We propose informal mediation and a draft settlement agreement for

your consideration."

3. Sequential Process Requirement

Certifiers must never skip steps:

1. Issue adverse action notice
2. Offer mediation or appeal
3. Operator requests mediation
4. Certifier accepts mediation
5. Mediation begins
6. Settlement agreement is negotiated
7. Timeframes

- ➢ Agreement must be reached within 30 days of the mediation session.
- ➢ If mediation fails, operator has 30 days from termination to appeal.
- ➢ Appeals concern the original adverse action, not the mediation outcome.

4. Benefits of Settlement Agreements

- Formal documentation of issue and resolution.
- Clear monitoring tool for corrective actions.
- Demonstrates seriousness of adverse action.

5. Best Practices vs. Bad Practices

Best Practices

- Follow sequential steps.
- Use mediation to resolve correctable issues.
- Approach mediation collaboratively.
- Ensure terms lead to compliance.

Bad Practices

- Do NOT include settlement terms in adverse action notices.
- Do NOT make adverse actions stricter to create "room" for settlement.
- Do NOT propose terms that cannot lead to compliance.

6. Settlement Agreement Components

6.1. Parties

- Certifier
- Operator
- Responsibly connected people

6.2. Useful Terms

Corrective Actions - What the operator agrees to do.
Outcome - What the certifier agrees to do (e.g., close proposed adverse action).
Timeframe - When corrective actions must be completed.
Consequences - What happens if terms are broken.
Effective Date - Date agreement becomes active.
Signatures - Authorized representatives of both parties.

6.3. Sample Settlement Terms

- Additional residue testing (possibly at operator expense).
- Shorter suspension period.
- Suspension instead of revocation.
- Additional unannounced inspections.

- Specific recordkeeping improvements.
- Evidence of adjusted practices.
- Notification obligations for OSP changes.

6.4. Consequences of Breaking a Settlement

- Certifier reissues the original proposed adverse action.
- Certifier may NOT issue a final adverse action solely because terms were broken.
- Operator retains appeal rights.
- Civil penalties cannot be included.
- Terms must be consistent with USDA organic regulations.

6.5. NOP Oversight

NOP may:

- review and reject settlement agreements (§205.663),
- review agreements during certifier audits,
- verify that terms were designed to ensure compliance,
- confirm implementation.

7. Settlement Agreement Template

All templates are available in BAG. Open the operator's file, select the NonConformity section, choose the NOP scheme, then open the template drop-down menu and select the template corresponding to the relevant stage of the mediation process.

Introduction

THIS SETTLEMENT AGREEMENT is entered into by [insert name of certifier] and [insert name of operator], and any person responsibly connected with [insert name of operator]. [Insert name of certifier] 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 USDA organic regulations (7 C.F.R. §§ 205 et seq.).

Agreement Template: Terms

Accordingly, the parties agree to the following:
1.[Insert name of certifier] agrees not to [describe original proposed adverse action] charging [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].
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 certifier representative]
[Insert title of above-named representative]
[Insert name of certifier]

8. Handling Surrenders

Operators may surrender at any time, also during mediation. However:

- If surrender occurs after a proposed adverse action, the adverse action process continues.
- If surrender occurs after an appeal, the appeal process continues.
- Final notices must still be issued so the record is complete.

9. Appeals Overview

Under the USDA National Organic Program (NOP), an **appeal** is a *written request asking a higher authority to re-examine an adverse action* issued by a certifier or by the NOP itself.

Any operator, applicant, certifier, or person affected by such an adverse action has the right to appeal under §§205.680–205.681.

9.1. How an operator may file an appeal directly to USDA (summary)

USDA provides a clear procedure for filing an appeal. The key steps are:

Filing deadline

The operator must file the appeal **within 30 days** of receiving the adverse action notification (or within the timeframe specified in the letter, if longer).

Where to file

Appeals must be submitted **in writing** to:

AMS Administrator c/o NOP Appeals Team (as specified by USDA)

What the appeal must include

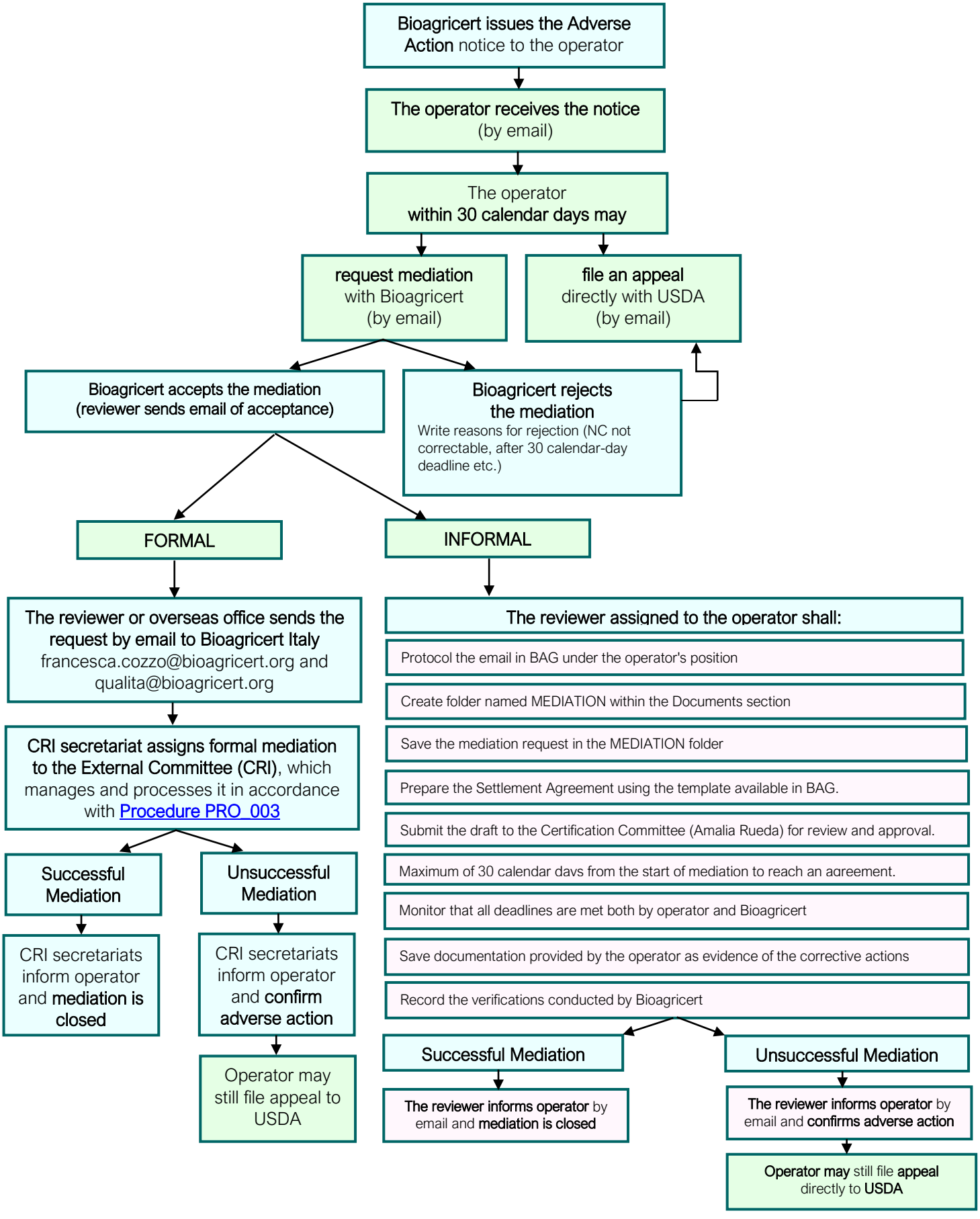
The operator must submit:

- a **copy of the adverse action notification**
- a **written explanation** of the reasons why the decision is believed to be incorrect or not in accordance with NOP regulations, policies, or procedures

Who reviews the appeal

The appeal is reviewed by USDA personnel **not involved in the original decision**, ensuring impartiality.

FLOW CHART


Bioagricert issues the Adverse Action notice to the operator
The operator receives the notice (by email)
The operator within 30 calendar days may
request mediation with Bioagricert (by email)
file an appeal directly with USDA (by email)
Bioagricert accepts the mediation (reviewer sends email of acceptance)
Bioagricert rejects the mediation
Write reasons for rejection (NC not correctable, after 30 calendar-day deadline etc.)
FORMAL
INFORMAL
The reviewer or overseas office sends the request by email to Bioagricert Italy francesca.cozzo@bioagricert.org and qualita@bioagricert.org
CRI secretariat assigns formal mediation to the External Committee (CRI), which manages and processes it in accordance with Procedure PRO_003
Successful Mediation
Unsuccessful Mediation
CRI secretariats inform operator and mediation is closed
CRI secretariats inform operator and confirm adverse action
Operator may still file appeal to USDA
The reviewer assigned to the operator shall:
Protocol the email in BAG under the operator's position
Create folder named MEDIATION within the Documents section
Save the mediation request in the MEDIATION folder
Prepare the Settlement Agreement using the template available in BAG.
Submit the draft to the Certification Committee (Amalia Rueda) for review and approval.
Maximum of 30 calendar days from the start of mediation to reach an agreement.
Monitor that all deadlines are met both by operator and Bioagricert
Save documentation provided by the operator as evidence of the corrective actions
Record the verifications conducted by Bioagricert
Successful Mediation
Unsuccessful Mediation
The reviewer informs operator by email and mediation is closed
The reviewer informs operator by email and confirms adverse action
Operator may still file appeal directly to USDA