

Accredited Certifying Agent (ACA) Compliance Procedures Minor vs Major Noncompliances

Draft 3 – NOSB Accreditation Committee
April 8, 2003

I. Introduction – The NOP Rule allows accredited certifying agents (ACAs) to issue certifications with “minor noncompliances”. The term “minor noncompliance” is not defined in the Rule or in OFPA. There is a need to provide guidance to ACAs to ensure that minor noncompliances are established in a consistent manner.

II. Background – The NOP Rule mentions “minor noncompliances” related to certification in §205.404(a), §205.406(a)(3) and §205.501(a)(18). The term “minor noncompliances” is also used in reference to conditions for accreditation in §205.506(b)(3).

Rule Citations:

§ 205.404 Granting certification.

(a) Within a reasonable time after completion of the initial on-site inspection, a certifying agent must review the on-site inspection report, the results of any analyses for substances conducted, and any additional information requested from or supplied by the applicant. If the certifying agent determines that the organic system plan and all procedures and activities of the applicant's operation are in compliance with the requirements of this part and that the applicant is able to conduct operations in accordance with the plan, the agent shall grant certification. The certification may include requirements for the correction of minor noncompliances within a specified time period as a condition of continued certification.

§ 205.406 Continuation of certification.

(a) To continue certification, a certified operation must annually pay the certification fees and submit the following information, as applicable, to the certifying agent:
(3) An update on the correction of minor noncompliances previously identified by the certifying agent as requiring correction for continued certification;

§ 205.501 General requirements for accreditation.

(a) A private or governmental entity accredited as a certifying agent under this subpart must:
(18) Provide the inspector, prior to each on-site inspection, with previous on-site inspection reports and notify the inspector of its decision regarding certification of the production or handling operation site inspected by the inspector and of any requirements for the correction of minor noncompliances;

§ 205.506 Granting accreditation.

(b) On making a determination to approve an application for accreditation, the Administrator will notify the applicant of the granting of accreditation in writing, stating:
(3) Any terms and conditions for the correction of minor noncompliances;

Preamble Citations:

While the Rule does not define “minor noncompliances”, the Preamble offers some guidance.

On page 80592, the Preamble states, “The certifying agent will make the determination of whether a violation of the Act and regulations is minor. Minor noncompliances are those infractions that, by themselves, do not preclude the certification or continued certification of an otherwise qualified organic producer or handler. The certifying agent would be free to modify the time period for correction should it believe it to be appropriate.”

Page 80593 goes on to state, “(13) Correction of Minor Noncompliances. We have amended section 205.406(a) by adding a new paragraph (3) which requires the certified operation to include with its annual reporting an update on the correction of minor noncompliances previously identified by the certifying agent as requiring correction for continued certification. A commenter recommended adding at 205.406(a) a requirement that the certified operation address any restrictions that have been applied to its certification under 205.404(a). We

agree with the commenter that the annual reporting by the certified operation should include an update addressing the certified operation's compliance with the certifying agent's requirements for the correction of minor noncompliances. Accordingly, we amended section 205.406(a) as noted above and re-designated paragraph (3) as paragraph (4). The certifying agent will make the determination of whether a violation of the Act and regulations is minor. Minor noncompliances are those infractions that, by themselves, do not preclude the certification or continued certification of an otherwise qualified organic producer or handler.”

As shown above, the Preamble provides some discussion of “minor noncompliances”, but it does not define the term or establish criteria for the determination of a minor noncompliance.

Accredited certifying agents are clearly empowered by the Rule to make determinations whether violations of the Act and regulations are minor. There is a need to define “minor noncompliance” and “major noncompliance” to assure that the Rule is consistently administered by all domestic and foreign, new and experienced ACAs.

There is also a need to provide clarification of the notification of noncompliance procedures. Such guidance is contained in the Accreditation Committee’s recommendation.

There is a further need to provide examples of minor and major noncompliances. Such examples are contained in the Addendum to this recommendation. The examples are presented for guidance and discussion purposes, and are not meant as an all-inclusive list. The examples address crop production only. No examples are given for livestock production, handling, or labeling violations.

III. Recommendation – The NOSB Accreditation Committee recommends the following:

All Notices of Noncompliance and Notices of Proposed Suspension or Revocation of Certification will follow the Certification, Compliance, and Appeals procedures specified in §205.400-205.406 and §205.660-205.681.

Definition of terms:

- Major Noncompliance - a finding of noncompliance that affects the integrity of the organic system or the organic product.
- Minor Noncompliance - a finding of noncompliance that is correctable and does not affect the integrity of the organic system or the organic product.

Notice of Noncompliance

Situations that Require Issuance of a Notice of Noncompliance:

1. Producer, handler, or processor representing uncertified product as “organic”.
2. An applicant or certified party that is in violation of the National Organic Program, 7 CFR Part 205.
3. All findings of minor or major noncompliance.

Required Components of a Notice of Noncompliance:

1. A description of each of noncompliance.
2. The facts upon which the notification of noncompliance is based and the relevant sections of the National Organic Program Rule that are in violation.
3. The required corrective action that must be taken by the applicant or certified operation in order to correct the noncompliance, including required documentation to be submitted to demonstrate correction of the noncompliance.
4. The timeline for completing the required corrective action.
5. The timeline for rebutting the Notice of Noncompliance.
6. Notification that if the required corrective actions are not completed within the required time period, or if there is no rebuttal of the Notice of Noncompliance within the required timeline, that further action, including civil penalties and suspension or revocation of certification, may occur.

Examples of Minor Noncompliance	Corrective Action
Inadequate buffer zone between organic and conventional production.	Letter that states that an adequate buffer zone has been established.
Inadequate recordkeeping – Producer does not record all materials applied or fails to record date that material was applied.	Letter stating that complete records will be maintained in the future, accompanied by examples of compliant records.

Resolution process

The Accredited Certifying Agent will verify by inspection or written documentation that the required corrective actions have been completed. When an applicant or certified operation completes the required corrective action, the ACA will send the operation a written notification that the noncompliance issue has been resolved.

Notice of Denial of Certification (NDC) Notice of Proposed Suspension of Certification (NPSC) or Notice of Proposed Revocation of Certification (NPRC)

Situations that require issuance of a Notice of Denial of Certification:

1. Applicant for certification has not taken required corrective action specified in a notice of noncompliance by the date specified in the notice of noncompliance.
2. The corrective actions undertaken by the applicant for certification are not sufficient for the applicant to qualify for certification.
3. Findings demonstrate that an applicant for certification has committed a major noncompliance.

Situations that require issuance of an NPSC or NPRC:

1. Certified operation has not taken required corrective action specified in a notice of noncompliance by the date specified in the notice of noncompliance.
2. The corrective actions undertaken by the certified operation are not sufficient for the operation to remain certified.
3. Findings demonstrate that the certified operation has committed a major noncompliance.

Examples:

- Findings demonstrate that an applicant or certified producer or handler is representing conventional products as organic.
- Findings demonstrate that an applicant or certified producer has applied a prohibited pesticide to their farming operation.
- Findings demonstrate that an applicant or certified handler has commingled organic and conventional items.

Components of the Notice:

1. Cover letter.
2. Notice of Intent to Deny Certification, Notice of Proposed Suspension of Certification, or Notice of Proposed Revocation of Certification:
 - The reasons for the denial, proposed suspension, or proposed revocation with appropriate National Organic Program citations.
 - Proposed effective date of suspension or revocation.
 - Impact of a suspension or revocation on future eligibility for certification;
3. The right to request mediation pursuant to §205.663 or to file an appeal pursuant to §205.681.

Failure to respond

If the operation fails to respond to the Notice of Denial of Certification, Notice of Proposed Suspension of Certification, or Notice of Proposed Revocation of Certification, the Accredited Certifying Agent will notify the applicant or certified operator that the operation's certification has been denied, suspended, or revoked, as applicable.

Distribution guidelines

All Notices of Denial of Certification, Notices of Noncompliance, Notices of Proposed Suspension of Certification, and Notices of Proposed Revocation of Certification will be distributed as follows:

- Original sent via certified mail to the applicant or certified party.
- Copy sent via regular mail to the applicant or certified party.
- Copy for office file.
- Copy for inspector's file.
- Copy sent via regular mail to the National Organic Program Administrator.

IV. Accreditation Committee vote – 3 in favor, 0 against, 2 abstained (ballot conducted by email)

V. Minority opinion – None.

VI. Conclusion – The Accreditation Committee recommends that the NOP post definitions of “minor noncompliance” and “major noncompliance” along with noncompliance notification procedures and examples of minor and major noncompliances to the NOP website as guidance to Accredited Certifying Agents.

**Accredited Certifying Agent Noncompliance Matrix
Addendum Draft 1 – NOSB Accreditation Committee
Examples of Minor and Major Noncompliances**

MINOR NONCOMPLIANCES		MAJOR NONCOMPLIANCES	
Minor Items → Conditional Certification	Minor Violations → Notice of Minor Noncompliance and Corrective Action	Major Violations → Denial, Suspension, or Revocation of Certification	Fraudulent Actions → Criminal Prosecution
Submitting incomplete or unclear paperwork.	Failure to submit required paperwork on time.	Refusal to submit required paperwork.	Submitting falsified documentation.
Submitting an unclear organic system plan.	Submitting an incomplete or inaccurate organic system plan.	Failure to follow the operation's organic system plan.	Submitting a falsified organic system plan.
Failure to immediately notify certifying agent of changes to the operation which <u>do not</u> affect the operation's organic status.	Failure to immediately notify certifying agent of changes to the operation which affect the operation's organic status.	Refusal to notify certifying agent of changes to the operation which affect the operation's organic status.	Providing false information to certifying agent concerning changes to the operation which affect the operation's organic status.
Failure to submit requested documentation to the certifier (such as prior land use forms, non-GMO letters, adjoining land use forms, etc.)	Failure to maintain documentation which verifies compliance with NOP standards.	Refusal to implement recordkeeping system that fully discloses all activities and transactions.	Falsifying records.
Maintaining records which are poorly organized and difficult to audit.	Maintaining records which cannot be audited.	Refusal to maintain records which can be audited.	Denying certifying agent access to records.
Poorly organized records which indicate lack of ability to maintain records for 5 years beyond their creation.	Absence of a system to maintain records for 5 years.	Refusal to maintain records for 5 years beyond their creation.	Willful destruction of documents.
Failure to fully document compliance with minor noncompliance requirements.	Failure to fully comply with all minor noncompliances from the previous year.	Refusal to comply with certification requirements (minor noncompliances) from the previous year.	Falsification of documentation; selling non-organic crops or products as organic.
Poorly organized, incomplete, or unclear documentation of approved inputs.	Failure to obtain documentation for purchase of approved inputs.	Refusal to obtain documentation to verify purchase of approved inputs.	Falsifying documentation; or, records which verify purchase and application of prohibited materials.
Poor understanding of difference between approved and prohibited materials; no evidence of application.	Application of "questionable" materials without prior approval of certifying agent.	Application of prohibited materials.	Falsification of records concerning application of prohibited materials; selling non-organic crops or products as organic.

MINOR NONCOMPLIANCES		MAJOR NONCOMPLIANCES	
Minor Items → Conditional Certification	Minor Violations → Notice of Minor Noncompliance and Corrective Action	Major Violations → Denial, Suspension, or Revocation of Certification	Fraudulent Actions → Criminal Prosecution
Incomplete records concerning compliance with annotation when “restricted” materials are used.	Failure to keep documentation verifying compliance with annotations when “restricted” materials are used.	Refusal to keep records verifying compliance with annotations when “restricted” materials are used.	Falsification of records concerning compliance with annotations when “restricted” materials are used.
Incomplete documentation of attempts to source organic seeds.	Failure to document attempts to source organic seeds.	Use of seeds treated with prohibited materials.	Willful use of treated seeds; falsifying documentation.
Incomplete, unclear, or poorly organized documentation concerning the GMO (excluded method) status of inputs, including seeds, inoculants, and Bt products.	Failure to inquire or document the non-GMO status of inputs, including seeds, inoculants, and Bt products.	Use of GMO inputs, including seeds, inoculants, or Bt products.	Willful use of GMO inputs; falsifying documentation.
Delays in paying certification and/or inspection fees.	Failure to pay certification and/or inspection fees.	Refusal to pay certification and/or inspection fees.	Falsifying records concerning payment of certification and/or inspection fees.
Poorly organized field history records.	Incomplete field history records.	Incorrect calculation of the amount of time from the last application of prohibited inputs to projected organic harvest - and the required 36 months have not passed.	Falsifying records concerning the amount of time from the last application of prohibited inputs to projected organic harvest.
Lack of adequate detail or clarity on field maps – e.g. maps which do not show acres, field numbers, and/or adjoining land uses.	Inaccurate maps.	Refusal to provide accurate maps.	Providing falsified maps.
Not recording field numbers on harvest and/or storage records.	Not keeping field activity, harvest, and/or storage records up to date.	Refusal to maintain field activity, harvest, and/or storage records.	Falsifying field activity, harvest, and/or storage records; denying certifying agent access to records.
Not using a consistent lot numbering system, if lot numbers are needed for the operation to verify compliance.	Not using lot numbers, if lot numbers are needed for the operation to verify compliance.	Refusal to implement a lot numbering system or other audit trail mechanism to verify compliance.	Falsifying lot numbers and/or falsifying other audit control data or documents.
Incomplete records of contracted services, such as planting, spraying, harvesting, storage, processing, and/or trucking.	Failing to keep records of contracted services needed to verify maintenance of organic integrity.	Refusal to keep records of contracted services, resulting in commingling or contamination of organic crop.	Falsification of records of contracted services, resulting in commingling or contamination of organic crop.

MINOR NONCOMPLIANCES		MAJOR NONCOMPLIANCES	
Minor Items → Conditional Certification	Minor Violations → Notice of Minor Noncompliance and Corrective Action	Major Violations → Denial, Suspension, or Revocation of Certification	Fraudulent Actions → Criminal Prosecution
Inconsistent cleaning of harvest equipment and/or storage units, <u>not</u> resulting in commingling or contamination of organic crop.	Inability to properly clean harvest equipment and/or storage units, <u>not</u> resulting in commingling or contamination of organic crop.	Failure to properly clean harvest equipment and/or storage units, resulting in commingling or contamination of organic crop.	Denying certifying agent access to the operation for inspection of equipment and/or facilities.
Ongoing need to harvest and segregate crops from buffer zones.	Inadequate buffer zones, possibly resulting in contamination of organic crops.	Failure to segregate crops harvested from buffer zones, resulting in commingling of conventional and organic crops.	Intentional application of prohibited material, resulting in residue levels beyond NOP tolerance levels; knowingly selling conventional crops or products as organic.
Failure to inform neighbors, highway departments, and/or other parties that land adjacent to organic fields should not be sprayed with prohibited materials (or sign no-spray agreements when these are available).	Failure to document notification of neighbors, highway departments, and/or other parties that land adjacent to organic fields should not be sprayed with prohibited materials.	Contamination of organic crops with residues of prohibited materials beyond NOP tolerance levels.	Intentional application of prohibited material, resulting in residue levels beyond NOP tolerance levels; knowingly selling conventional crops or products as organic.