Accredited Certifiers Association, Inc.

Accredited certifying agents working together to ensure the integrity of organic certification in the United States

A Roadmap to "Sound and Sensible"

March 25, 2013

Developed as an outcome of the "Sound and Sensible" ACA Training Discussion, Jan. 2013, and expanded upon by the ACA Sound and Sensible Working Group.

Community conversations at trainings and testimonials at NOSB meetings have highlighted the need to reduce the burden of organic certification on operations and certifiers, to support the ongoing growth of the organic industry. Recordkeeping requirements have in some cases driven operations out of certification that are otherwise compliant. Additionally, a reliance on paperwork to demonstrate compliance has increased the costs of accreditation audits.

Since 2009 NOP has promoted a "Strict but Sensible" philosophy of certification. The Program reiterated its commitment to Sound and Sensible certification at the 2013 ACA training. While certifiers, operations, and the Program agree that certification should be Sound and Sensible, there are systemic barriers to our common goal. Some certifiers have developed creative solutions to minimize the barriers and stay in compliance with the Regulation. If certifiers and accreditation auditors can be trained on examples of Sound and Sensible and consistently accept this approach, organic certification will remain accessible to a diversity of operations and effective at ensuring compliance. We have organized examples into three categories: The Organic System Plan, Education of / Consulting with Organic Operations, and Focus on Compliance.

1. The Organic System Plan

The Organic System Plan may be the largest cultural barrier to paperwork reduction in the organic certification process. It has historically been a paper based, lengthy and annually updated document that has been interpreted as needing to capture all elements of a compliance plan accurately and in real time. These assumptions must be broken in order to move into the future of organic certification. The OSP does not have to be paper based, does not have to be updated in real time, does not have to be re-written in entirety annually, nor does it need to capture every practice, but only those that are required by the Regulation. Specific ways to shift our view of the OSP follow:

- NOP regulations only require an operation to notify the certifier when a change to their operation may affect compliance. Certifiers would like to stop issuing notices of noncompliance to operations who implement an otherwise compliant practice before updating the OSP. The 2013 NOP training clearly supported this approach. This message must be delivered to accreditation auditors. Additionally the Penalty Matrix must be updated so that a notice of noncompliance is not required for compliant practice changes. Detailed line-by-line feedback on the Penalty Matrix has been submitted by several certifiers.

- Rather than requiring a complete OSP to be filled out each year, some certifiers only require a short summary of changes or a statement from the operation that there were no changes and are no anticipated changes to practices. Accreditation auditors must be trained to expect and accept this as a compliant annual update.
- In order to capture changes to the OSP that may affect compliance in a timely manner, OSP's should be allowed to be updated by the operation in writing, over the phone, by email, or in person. ACA's should be allowed to collect these updates and record them in a variety of ways, including but not limited to making notes to the original OSP themselves, or changing data in a database to reflect the update from the operation. As long as the updated OSP is made accessible to the operation this flexibility accommodates the realities of an operation's time and resources. Accreditation auditors must be willing to accept many forms of updates other than written.
- It is acceptable for the ACA (either office staff or inspector) to manually make the update to the OSP based on the information provided by the client, so long as the updated OSP is provided to or made available to the operation which provides an opportunity for the client to edit or confirm the changes made by the certifier (electronically or in paper).
- OSP information may not always live in a "form", and may sometimes live as data in a database (for instance, client name, address, phone number, parcel location, crops, etc). Updating the data electronically is the same as updating a form.
- Records are not always paper. Certifiers and accreditation auditors should accept a variety of records, which were discussed in the NOP training including photos, videos, drawings or sketches, illustrations of procedures, non-written marks – hash marks, chalk marks, machete marks on wood, etc. (There may be legal considerations for accepting alternative records.)
- It is acceptable that minor updates to the OSP will be made at inspection and this is not a failing of the ACA or the operation. Accreditation auditors should be trained to accept this reality of working with dynamic operations.
- OSP's should not include plans for every potential scenario, aspect of the operation, or possible compliance point. Unless it is specifically required to be in the OSP by the Regulations, details about the operation, crops, herds or products can be verified on site by the ACA. For example, if an operation's OSP does not include the age at which pullets are provided access to the outdoors, or the temperature at which they are kept inside, this can be verified onsite.
- Simplified language should be acceptable to NOP auditors, even if it is not the exact regulatory language. Using plain language can sometimes convey a requirement more directly than the Regulatory language.
- Emphasize observation of practices during the inspection, in addition to verification of the OSP. Some observations may not fit within the inspection report forms. Use alternatives to record compliance or issue, such as a digital camera.

2. Education of / Consulting with Organic Operations

The "Education vs. Consulting" conflict of the regulatory system permeates many of the areas where ACAs interact on a day-to-day basis with their certified operations and applicants for certification.

NOP §205.501(a)(8) states: A private or governmental entity accredited as a certifying agent under this subpart must: *Provide sufficient information to persons seeking certification to enable them to comply with the applicable requirements of the Act and the regulations in this part.*

At the same time, there are restrictions on consulting under NOP 205.501(a)(11)(iv) which states: A private or governmental entity accredited as a certifying agent under this subpart must: Prevent conflicts of interest by: *Not giving advice or providing consultancy services, to certification applicants or certified operations, for overcoming identified barriers to certification.*

In comparison, ISO 17065 Standard (Section 4.2.6) and the IFOAM Norms (1.3.12 – 1.3.14) also do not allow a certification body to offer or provide consultancy to its clients. However, both reference the ability of accredited certifiers to provide information on findings, and to explain the standards or certification requirements to clients.

ACAs believe that the following types of information may be provided to a client/applicant, either by the ACA or the inspector, without there being concern that providing the information is consulting ***nor*** that they are helping the client (or applicant) '…overcome identified barriers to certification':

- **A specific rule section reference**

  Example # 1: a client/applicant calls asking if they may treat an animal with aspirin; ACA answers their question and refers them to §205.603(a)(2) of the rule.

  Example # 2: a client/applicant calls and asks if a certain crop rotation is acceptable; ACA answers their question and refers them to §§205.205 Crop rotation and 205.2 Terms defined – *Crop rotation*, with appropriate explanation of each relative to how the ACA has interpreted these sections.

  Example # 3: a client/applicant calls and asks if a multi-ingredient product whose individual ingredients are not on the National List is acceptable to use; ACA explains current requirements regarding the use of ingredients not on the National List. If the client would like to have the ingredient reviewed, the ACA requests ingredients and makes a determination based on ACA's material review process.

  Example # 4: a client/applicant asks if they can purchase nonorganic seeds; ACA refers them to §§205.205 Seeds, seedlings, planting stock and 205.2 Terms defined – *Commercially available*, and further clarifies the requirements under §205.204 by

providing a step-by-step explanation of what commercial availability means, what documentation will be required if nonorganic seeds are bought (e.g. for corn: non-GMO/untreated; for legumes: non-GMO/ untreated/ inoculant treatment; etc), and what records must be kept.

Example # 5: a client/applicant asks if a generic material is acceptable to use, (e.g. egg shell meal, worm castings, vermiculite, neem, molasses, milk replacer, pectin, dried poultry litter, boric acid, soap, pyrethrum, etc); ACA explains the requirements in the applicable sections of the regulation and may also refer to OMRI Generic Materials List, and if necessary (i.e. material not on OMRI List) further review is done per ACA material review process.

- **Policies & procedures of ACA**

  Example: ACA holds a meeting to share information with clients or potential clients regarding the certification process, which may include answers to questions regarding fees, a review of the forms used, how materials are reviewed, and examples of how certification requirements are verified (i.e. buffers, seeds, crop rotation, record keeping, pasture requirements, off-farm manure, off-farm bedding, etc. are assessed). This meeting may include actual filling out of forms by the client/applicant, as well.

- **Guidance materials developed by the ACA**

  Example # 1: client/applicant has questions regarding the appropriate buffer zone size; ACA provides guidance document pertaining to the issues to consider (topography, wind direction, type of adjoining crop, typical sizes of buffer zones) in establishing a buffer zone. The inspector then verifies whether the buffer zone is adequate.

  Example # 2: client/applicant submits noncompliant label sample; ACA responds with references to Rule sections, but additional labels submitted are still noncompliant. ACA provides samples of generic labels which are compliant, along with samples of generic labels that are noncompliant.

  Example # 3: client/applicant asks about seeds (see above); ACA provides guidance document on the issues to consider in order to comply with §§205.204 and 205.2 Terms defined – *Commercially available*.

- **Additional Resources - internal to ACA, or external resources**

  Example # 1: client contacts ACA asking for an appropriate material/product to treat a plant disease; ACA has a policy to provide clients with a list of materials that it has reviewed suitable for treatment of that disease. ACA also informs client that he/she may refer to the OMRI or WSDA lists of materials for an appropriate material. If client/applicant asks about a specific product, then ingredients are requested (if not

OMRI or WSDA approved already), reviewed and a determination is made (see above).

Example # 2: ACA makes available to clients a list of resources to locate additional information. This could include directories, such as the MOSES Resource Directory, seed catalogs, lists of input suppliers, lists of currently certified operations, any known regional, state or county resources and programs (e.g. department of agriculture, extension, NRCS, sustainable agriculture groups, meetings/conferences/field days, etc).

Barriers to Education

With the above in mind, ACAs have identified the accreditation process – specifically a given auditor's strict interpretation of *providing consultancy services* – as the driving mechanism that has led ACAs to be hesitant to provide information to clients/applicants. This results in clients/applicants feeling that they are in the dark, that the certifier is not forthcoming with answers to their questions, and that certification may not be attainable for them. This also results in, unavoidably, a perceived disparity between ACAs and their ability to provide service to a client/applicant, resulting in, "certifier shopping".

And, finally, given the apparent lack of understanding or agreement on what constitutes appropriate education and inappropriate consulting, the current accreditation process via the auditors (desk audit, site visit, findings, report) is tending to focus more on noncompliance notices that the auditor thinks should be issued to a client/applicant. This exacerbates an adversarial relationship between certifiers and clients/applicants, instead of a encouraging a collaborative relationship where certifiers can help an operation come in to full compliance through ongoing improvements. The current process also results in noncompliance(s) to the ACA, where none would be needed if a better understanding and broader perspective were had by an auditor.

Recommendation

We recommend that the National Organic Program consider the following modifications to the accreditation and auditing process:

- Education for NOP and auditors regarding the positive impact client/applicant education has on the certification process, including the bedrock principle of continuous improvement. An informed, educated client/applicant tends to take the process seriously, provides more complete applications, and is less likely to incur noncompliances. This saves time and money for both the client/applicant and the ACA. These clients/applicants are generally boosters of certification, including continual improvement in their own operations.

- Discussion(s) between a client/applicant and an inspector on topics other than a citation should not be identified as a noncompliance by auditors. As long as an inspector is not doing the work for the client—i.e. not providing or advising specific methods or materials to use—they (the inspector) should be allowed and encouraged to explain the

requirements of the standards and discuss compliant practices, with appropriate (see above) reference to the Rule.

- Auditors should be reminded that §205.501(a)(8) requires ACAs to provide information to clients. Auditors should have leeway to trust that ACAs are adhering to the Rule and using appropriate discretion. Just as auditors interpret and apply accreditation requirements with appropriate discretion and perspective, ACAs should also be given similar professional courtesy based on past and current performance over the wide range of areas/scopes being covered by an auditor, ***particularly with regards to agricultural methods and materials, of which ACAs are well-trained to assess and determine overall compliance of clients/applicants.***

- ACAs should participate in the training of auditors in order to provide real-life scenarios. Examples of scenarios could be prepared in ppt. presentations for future reference.

3. Focus on Compliance

While the ACA appreciates the efforts of the NOP to develop NOP 2612 Instruction Document, *Recommended Penalties for Violations of Specific Regulatory Requirements* and the *Penalty Matrix by Category of Violation* in an effort to provide consistency to compliance decisions, we believe that the current Instruction Document and Penalty Matrix rely too heavily on the use of noncompliances to address issues that do not affect organic integrity. The overreliance on noncompliance notices creates an adversarial relationship between certifiers and operators, and hampers beneficial collaboration that can better achieve desired continual improvement of organic systems.

Several ACAs have submitted comments and suggested revisions to the Penalty Matrix and to NOP 2612, *Recommended Penalties for Violations of Specific Regulatory Requirements.* The ACA supports the suggested revisions.

We believe that the following considerations are key in the development of an effective, fair and sensible compliance policy.

- Notices of noncompliance should only be issued in cases where there is an actual breach of organic integrity or where there is a serious organic system plan problem.

- ACAs should have autonomy and flexibility in assessing specific situations, to benefit both certifiers and organic operators. This should include empowering certifiers and operators to use multiple tools to bring operators into compliance, rather than relying strictly on noncompliances.

- Acknowledgement that minor changes to the OSP that do not otherwise affect organic integrity and that are approved by the certifier are not noncompliances. The definition of noncompliances should be revised accordingly. (Also see The Organic System Plan discussion above.)

- NOP must support and encourage certifiers to embrace the concept of *Practices not Paperwork*, as suggested by other certifiers. Focusing on the effectiveness of practices implemented by operations, rather than how these are described in documentation will allow certifiers to focus efforts on bringing noncompliant practices into compliance. This readjustment of focus will result in greater organic integrity, as certifiers will have more time and energy for enforcement of significant noncompliance issues and for development of a more sound and sustainable organic certification program.

We ask that the NOP respect the ability of certifiers to make decisions that most effectively serve their organization, certification applicants, and certified organic operators. With our suggested revisions and with a more general approach, certifiers will have the guidance they need to implement consistent certification decisions. Micro-managing certifiers and being too prescriptive in sanctions hurts certifiers and the operators who depend upon certification. Certifiers are capable and competent to evaluate individual circumstances and respond in a sound and sensible manner.

Suggested Revisions to NOP 2612

In order to carry out a more Sound and Sensible approach, we urge the NOP to revisit NOP 2612, *Recommended Penalties for Violations of Specific Regulatory Requirements, to* align it with principles suggested above. Revisions should include:

1) An additional definition: Reminder - An issue that does not or would not compromise organic integrity of product. Examples of this include minor OSP updates needed, such as an "n/a" box checked, or a reminder about how to maintain compliance. A Reminder may also impart information about areas for continuous improvement & learning opportunities. Inspectors may observe these opportunities onsite, or accredited certifying agents may issue a reminder after the review of an OSP update or inspection report. There is no immediate action to be taken by the operation, and any improvements can be observed at the next inspection.

2) Revision to "Notices of Noncompliance (NONC)": Noncompliances in this category must be corrected prior to issuing a new certification and must be promptly and sufficiently corrected by certified operations. Practices have been implemented that compromise Organic product integrity or the operation has failed to adequately resolve previous Conditions. Examples of this level of noncompliance include failure to submit requested information by a deadline, failure to pay fees, use of a noncompliant label that misleads consumers or use of a prohibited material.

   The examples of *timely information, failure to update the organic system plan*, and *inadequate recordkeeping* should be removed from this definition as these are not activities that compromise organic integrity.

3) Revision to Major Noncompliances – "Denial of Certification" or "Combined NONC with Proposed Suspension of Certification": Noncompliances in this category affect the integrity of the organic system or product and appear willful and/or noncorrectable.

They may include unresolved noncompliances previously issued. Examples include a complete lack of any records for several years, refusal to provide requested information or access to the operation, and refusal to modify practices or operation in order to comply.

4) Revision to Major Noncompliances – "Denial of Certification" or "Combined NONC with Proposed Revocation of Certification": Examples of this level of noncompliance include altering records to conceal noncompliance practices.

Suggested Revisions to the Penalty Matrix

Based upon our suggested revisions to Section 4.2 Definitions in NOP 2612, we suggest the Penalty Matrix is also revised to align with these revisions. Again, ACA supports the revisions submitted by individual organizations.

1) NOP should encourage certifiers to use other communication tools to ensure compliance, outside of noncompliance notices, when there is no major threat to organic integrity. Many sections in the Penalty Matrix insist that noncompliances be issued for items that certifiers have historically and effectively treated as simple requests for additional information. When certifiers need to request further information that has not been presented in the OSP they should be encouraged to do so without prescriptive language requiring issuance of a noncompliance notice.

2) By requiring certifiers to respond to small issues, such as the use of an allowed input that's not on the OSP, by issuing a Notice of Noncompliance, we decrease the relative impact of the noncompliance notification process, and we increase burden on the certification system. Notices of noncompliance should only be issued in cases where there is an actual breach of organic integrity or where there is a serious organic system plan problem.

   We do not consider that the following circumstances must be addressed by the issuance of a notice of noncompliance:
   - Requests for additional information
   - Incomplete OSP
   - Incomplete recordkeeping system
   - Wrong colors in the USDA seal
   - Failure to submit annual update in a timely manner
   - Placement of "certified organic by…" statement above the name of the certified operation.
   - Use of compliant material without OSP update

   We would consider the following as reasons to issue a notice of noncompliance:
   - Nonpayment of certification fees
   - Not providing sufficient access to pasture for ruminants

- Sale of product with a 100% organic label claim on that contains only 80% organic ingredients
- Use of a prohibited fertilizer on organic crop land
- Use of a prohibited ingredient in the formula of an organic product
- Commingling of organic & nonorganic products during storage.

3) Encourage the use of upgraded penalty levels for operations with continual noncompliances with marginal responses that are generally not effective. Examples include:

    - 2nd year repeat noncompliance requires the submission of a root cause analysis explaining why previously submitted responses to correct the issue were not adequately implemented;
    - 3rd year repeat noncompliance automatically triggers a notice of proposed suspension.

4) We suggest the inclusion of a Categorization Chart, similar to the CCOF Issue Severity Categorization chart below. This Chart would provide concise guidance in determining the level of noncompliance and also allow certifiers more flexibility in addressing compliance issues on an individual basis, while also providing the consistency amongst certifiers that the NOP desires.

5) Accreditation auditors must be trained to allow certifiers to utilize these other communication tools. This is a key element in bringing the compliance process to a sound and sensible level.

CCOF Issue Severity Categorization					
	REMINDER	**CONDITION**	**NONCOMPLIANCE**	**COMBINED NONC & PROPOSED SUSPENSION**	**COMBINED NONC & PROPOSED REVOCATION**
Description	Issue does not or would not compromise organic integrity of product.	No known issues related to product integrity, but additional information is needed. *Results in a Notice of Noncompliance if not sufficiently resolved.*	Organic product integrity is compromised or failure to adequately resolve previous Conditions. *Results in a Proposed Suspension if not resolved. May result in a Proposed Revocation if fraud is involved.*	Noncompliance is willful and/or non-correctable.	Noncompliance is willful and/or non-correctable, and includes fraud.
Action	No immediate action to be taken by operation.	Response from certified operation required within specified time period (usually 30 days).	Corrective action (or rebuttal) and response from certified operation required within specified time period (usually 30 days)	Rebuttal, mediation or appeal.	Rebuttal, mediation or appeal.
Examples	• Minor OSP issue such as: "Not Applicable" box not checked. • Area for learning & continuous improvement & opportunities. • Information about how to maintain ongoing or future compliance- such as notification of 2016 deadline for placement of COB statement or information about preharvest intervals when the operation may use manure in the future.	• Proposed plan is not compliant. • More information needed to determine if operation is compliant or not. • Integrity of product in the marketplace is not compromised, but minor issues related to record-keeping or paperwork. • OSP is inaccurate or incomplete but practice is compliant.	• Operation failed to respond to previous Conditions by specified date. • Operation responded to previous Conditions and the response showed that the issue was not corrected or did in fact affect organic integrity. • Use of a prohibited material including treated seed or prohibited processing aid. • Nonpayment of fees. • Ongoing issue that is not satisfactorily resolved. • Noncompliant label that misleads consumer printed and in use by client.	• Willful, repeated or ongoing noncompliances • Violation that is not correctable. • Complete lack of records for multiple years. • Refusal to provide information requested or access to portions of operation. during inspection • Refusal to modify operation in order to comply.	• Operation sells product as organic after being informed by certifier that product is not eligible for sale as organic/ • Operation falsely states that corrective action has been taken to resolve previous noncompliance/ • Fraudulently altering records to conceal noncompliant practices.