

§ 205.504 Evidence of expertise and ability.

A private or governmental entity seeking accreditation as a certifying agent must submit the following documents and information to demonstrate its expertise in organic production or handling techniques; its ability to fully comply with and implement the organic certification program established in §§ 205.100 and 205.101, §§ 205.201 through 205.203, §§ 205.300 through 205.303, §§ 205.400 through 205.406, and §§ 205.661 and 205.662; and its ability to comply with the requirements for accreditation set forth in § 205.501:

(a) *Personnel.* (1) A copy of the applicant's policies and procedures for training, evaluating, and supervising personnel;

(2) The name and position description of all personnel to be used in the certification operation, including administrative staff, certification inspectors, members of any certification review and evaluation committees, contractors, and all parties responsibly connected to the certifying agent;

(3) A description of the qualifications, including experience, training, and education in agriculture, organic production, and organic handling, for:

(i) Each inspector to be used by the applicant and

(ii) Each person to be designated by the applicant to review or evaluate applications for certification; and

(4) A description of any training that the applicant has provided or intends to provide to personnel to ensure that they comply with and implement the requirements of the Act and the regulations in this part.

(b) *Administrative policies and procedures.* (1) A copy of the procedures to be used to evaluate certification applicants, make certification decisions, and issue certification certificates;

(2) A copy of the procedures to be used for reviewing and investigating certified operation compliance with the Act and the regulations in this part and the reporting of violations of the Act and the regulations in this part to the Administrator;

(3) A copy of the procedures to be used for complying with the record-keeping requirements set forth in § 205.501(a)(9);

(4) A copy of the procedures to be used for maintaining the confidentiality of any business-related information as set forth in § 205.501(a)(10);

(5) A copy of the procedures to be used, including any fees to be assessed, for making the following information available to any member of the public upon request:

(i) Certification certificates issued during the current and 3 preceding calendar years;

(ii) A list of producers and handlers whose operations it has certified, including for each the name of the operation, type(s) of operation, products produced, and the effective date of the certification, during the current and 3 preceding calendar years;

(iii) The results of laboratory analyses for residues of pesticides and other prohibited substances conducted during the current and 3 preceding calendar years; and

(iv) Other business information as permitted in writing by the producer or handler; and

(6) A copy of the procedures to be used for sampling and residue testing pursuant to § 205.670.

(c) *Conflicts of interest.* (1) A copy of procedures intended to be implemented to prevent the occurrence of conflicts of interest, as described in § 205.501(a)(11).

(2) For all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and all parties responsibly connected to the certifying agent, a conflict of interest disclosure report, identifying any food- or agriculture-related business interests, including business interests of immediate family members, that cause a conflict of interest.

(d) *Current certification activities.* An applicant who currently certifies production or handling operations must submit: (1) A list of all production and handling operations currently certified by the applicant;

(2) Copies of at least 3 different inspection reports and certification evaluation documents for production or

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handling operations certified by the applicant during the previous year for each area of operation for which accreditation is requested; and

(3) The results of any accreditation process of the applicant's operation by an accrediting body during the previous year for the purpose of evaluating its certification activities.

(e) *Other information.* Any other information the applicant believes may assist in the Administrator's evaluation of the applicant's expertise and ability.

§ 205.505 Statement of agreement.

(a) A private or governmental entity seeking accreditation under this subpart must sign and return a statement of agreement prepared by the Administrator which affirms that, if granted accreditation as a certifying agent under this subpart, the applicant will carry out the provisions of the Act and the regulations in this part, including:

(1) Accept the certification decisions made by another certifying agent accredited or accepted by USDA pursuant to § 205.500;

(2) Refrain from making false or misleading claims about its accreditation status, the USDA accreditation program for certifying agents, or the nature or qualities of products labeled as organically produced;

(3) Conduct an annual performance evaluation of all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and implement measures to correct any deficiencies in certification services;

(4) Have an annual internal program review conducted of its certification activities by certifying agent staff, an outside auditor, or a consultant who has the expertise to conduct such reviews and implement measures to correct any noncompliances with the Act and the regulations in this part;

(5) Pay and submit fees to AMS in accordance with § 205.640; and

(6) Comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary.

(b) A private entity seeking accreditation as a certifying agent under this subpart must additionally agree to:

(1) Hold the Secretary harmless for any failure on the part of the certifying agent to carry out the provisions of the Act and the regulations in this part;

(2) Furnish reasonable security, in an amount and according to such terms as the Administrator may by regulation prescribe, for the purpose of protecting the rights of production and handling operations certified by such certifying agent under the Act and the regulations in this part; and

(3) Transfer to the Administrator and make available to the applicable State organic program's governing State official all records or copies of records concerning the certifying agent's certification activities in the event that the certifying agent dissolves or loses its accreditation; *Provided*, That such transfer shall not apply to a merger, sale, or other transfer of ownership of a certifying agent.

§ 205.506 Granting accreditation.

(a) Accreditation will be granted when:

(1) The accreditation applicant has submitted the information required by §§ 205.503 through 205.505;

(2) The accreditation applicant pays the required fee in accordance with § 205.640(c); and

(3) The Administrator determines that the applicant for accreditation meets the requirements for accreditation as stated in § 205.501, as determined by a review of the information submitted in accordance with §§ 205.503 through 205.505 and, if necessary, a review of the information obtained from a site evaluation as provided for in § 205.508.

(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:

(1) The area(s) for which accreditation is given;

(2) The effective date of the accreditation;

(3) Any terms and conditions for the correction of minor noncompliances; and