



# Dealing with Unsafe Situations and Threats During Inspections

January 15, 2013  
Certifying Agent Training, Orlando, FL  
USDA Agricultural Marketing Service  
National Organic Program



# Today's Objectives



- What is an unsafe situation?
- What is and what is not a threat?
- Personal safety
- Regulations supporting notices of noncompliance and adverse actions
- Documentation supporting adverse actions
- Reporting threats

# What's an Unsafe Situation?



During an onsite inspection or the planning for an onsite inspection, inspectors or ACA personnel encounter or identify dangerous facilities and/or facilities not equipped with proper safety gear

# What Are Threats?



- Threats include:
  - Physical or verbal threats by operation management or employees against the safety of certifiers or inspectors, especially as part of an effort to interfere with inspection
- Threats do not include:
  - Rudeness or insults
  - Expressions of dissatisfaction with certifier or inspector actions



You are not obligated to inspect an operation if your safety is threatened by an operation's facilities, equipment, management or employees

# What Can You Do?



## Unsafe situations

- Halt or postpone the inspection until conditions are made safe
- Require the provision of safety equipment while onsite

## Threats

- Leave the premises immediately

# Regulations Supporting Notices of Noncompliance and Adverse Actions



§ 205.400(c): A person seeking to receive or maintain organic certification under the regulations in this part **must permit on-site inspections with complete access** to the production or handling operation, including noncertified production and handling areas, structures, and offices by the certifying agent ...

# Documentation for Adverse Actions



- Certifying agents should thoroughly document adverse actions (denial or proposed suspension of certification) taken in response to threats or unsafe situations
- Documentation should explain how threats to the safety of inspectors prevented the on-site inspection from occurring



# Reporting



- Inspectors or certifiers should report threats to local law enforcement, as appropriate
- Inspectors should report threats and unsafe situations to certifying agents
- Certifiers should report threats to the NOP

# Summary



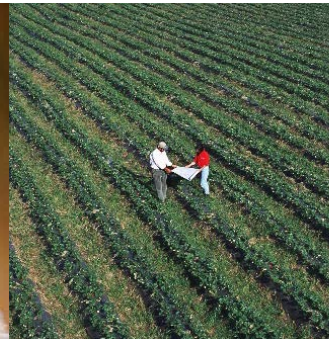
- Evaluate the situation to determine whether it is unsafe
- Do not oblige staff to perform duties in unsafe situations
- Issue notices of noncompliance or take adverse actions, as appropriate
- Report threats to the NOP



# Organic System Plan (OSP) Updates and Notification of Changes

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# Learning objectives



- Content of annual organic system plan updates
  - Obtaining sufficient information
  - Minimizing paperwork
- Notification of ongoing changes
  - Criteria for changes that require notification
  - Examples
- Responsibilities of certified operations
- Responsibilities of certifying agents



## **Certifying agents must ensure organic integrity while setting sensible limits on paperwork**

- Obtain enough information to verify compliance, but ...
- Minimize the amount of documentation required for certification

# Why is this important?



Different certifying agents often set different requirements

- Some do not get enough information to verify the operation's compliance with organic regulations
- Some request excessive paperwork, beyond what is necessary to determine compliance
- The goal is consistency and balance



# Regulatory References

# § 205.406, Continuation of certification



- (a) A certified operation must **annually** ... submit the following information ... to the certifying agent:
  - (1) An **updated** organic system plan, which includes:
    - (i) A **summary statement**, supported by documentation, detailing any deviations from, changes to, modifications to, or other amendments made to the previous year's OSP during the **previous year**; and
    - (ii) Any **additions or deletions** to the prior year's OSP, intended to be undertaken in the **coming year** ...



# § 205.406, Cont. of certification cont'd



- (2) Any **additions to or deletions** [to the operation's contact information]...;
- (3) An update on the **correction of minor noncompliances** previously identified by the certifying agent as requiring correction for continued certification; and
- (4) **Other information** as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.

# § 205.400 (f)(1), notification



- Operations must immediately notify the certifying agent of **all applications of prohibited substances** whether intentional or accidental, to land or facilities under organic certification

# § 205.400 (f)(2), notification



- Operations must notify the certifying agent of any change that **may affect its compliance** with the Act and the regulations in this part



# Annual Organic System Plan Updates

# Content of OSP annual updates



Organic system plan annual updates must include:

- **All changes that were made** in the past year
- **All changes that are planned** for the upcoming year

*Required by §205.406(a)(1)*



Examples of information that should be included in OSP annual updates:

- New suppliers
- New fields in production, or changes to existing fields (i.e., different crop)
- Changes in animal herd numbers
- Changes to crop rotations

# Summary statement, annual updates



- As part of the OSP annual update, operators must submit a written statement that summarizes all changes from the previous years
- Many possible ways to comply with this requirement
  - Written summary
  - Completed checklist

*Cite violations to §205.406*

# Scope of annual updates



- If the information on organic operations **does not change**, then the information **does not need to be resubmitted** in the OSP annual update
- If a certifying agent requires the operation to resubmit all information, that **exceeds** the certifying agent's regulatory authority and may result in a Notice of Noncompliance





# Ongoing Notification of Changes

# Ongoing notification of changes



Notifying the certifying agent of ad hoc changes, per §205.400:

- Notification is **only** required for changes that **may affect compliance**
- It is **not** required for each and every change
- **Many ways** to comply: verbal and written notification

# Is notification required?



Could the change affect compliance? *or*  
Was a prohibited substance applied?

Yes

No

Do not require  
notification or  
updates

Inform operation of impact on compliance

Determine if the change requires submission  
of records/documentation

Update the operation's file with the new  
information

# Changes that require notification



- **Operations must notify certifying agents of ongoing changes that may affect compliance**
  - Farmer adds additional parcels of land
  - Processor adds a new product (approved for fruit juice mixes, adding blended teas)
  - Operator creates new retail labels
  - Poultry producer moves to a new facility

# Changes that don't require notification



- **Minor changes don't require notification during the year**
  - New supplier of organic ingredients
    - Handler should keep proof of organic status
  - New livestock feed supplier
    - Producer should keep proof of organic status
  - Producer uses a new compliant input
    - Producer may want to verify that input is allowed by contacting the certifying agent



# Responsibilities of Certified Operations

# Certified operator responsibilities



## Key message:

- It is the responsibility of the client or certified operator, not the certifying agent, to demonstrate compliance with the USDA organic regulations

# Demonstrating compliance



Certified operations must:

- Work with their certifying agent to understand **how to demonstrate compliance** (OSPs, records, other communication)
- Demonstrate compliance to the certifying agent through **OSPs/OSP annual updates** and appropriate **notification of changes** that may affect compliance



# Clarifying questions



- If certified operations have questions about whether a change could affect compliance, then they should reference the regulations or contact their certifying agent



# Responsibilities of Certifying Agents



## Certifying agent responsibilities:

- Require **sufficient OSP annual updates**
- Complete a **review** of the annual update to determine whether it complies
- If the OSP update is **insufficient**, take action (request info, issue notice of noncompliance)
- Conduct annual inspections **even if the operation has not submitted an updated OSP**

# Certifying agent responsibilities



Certifying agents should:

- Define their criteria for notification of changes
- Communicate with clients so that they understand how to demonstrate compliance (OSPs, emails, records, phone calls)
- Explain how certified operations should notify you of changes (mail, email, phone)



## Certifying agent responsibilities:

- Communicate reasonable expectations about ongoing notification of changes
- Do not require notification for every change made throughout the year



# Summary



- Differentiate between **minor changes** and those that could **affect compliance**
- **Communicate** with your clients about the **criteria** for minor versus major changes, as well as your process for submitting updates
- **Minimize paperwork**, where possible

# Summary: OSP annual updates



Annual organic system plan updates:

- Must include enough information **to demonstrate compliance**
- Should only describe **changes**
- **Should not repeat** all previously submitted information



# Summary: ongoing notification



- If ongoing changes **may affect compliance**, then operations must notify their certifying agent
- If **prohibited substances** are applied, whether accidentally or intentionally, then operations must notify the certifying agent immediately



Certifying agents should be **sound**:

- Verify and enforce compliance
- Take action on noncompliances

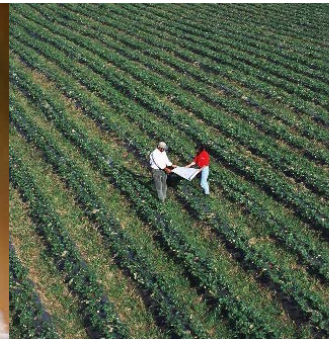
Certifying agents should be **sensible**:

- Only request those updates which may affect compliance
- Educate clients on your requirements



# Adequate Records

January 15, 2013  
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# Objectives:



- Definition of records
- Recordkeeping requirements
- Multiple formats of records
- Role of certifying agents
  - Ensuring proper compliance
  - Communicating appropriate, but not burdensome, requirements

# Why is this important?



- Adequate records are essential for verification
- Inadequate records can allow violations to go overlooked
- Excessive recordkeeping requirements can be time-consuming and expensive
- NOP enforces proper recordkeeping requirements by overseeing certifying agents



## Records

“Any information in **written, visual, or electronic form** that documents the activities undertaken by a producer, handler, or certifying agent to comply with the Act and regulations in this part.”



YENI NAVEN S.P. DE RL  
 LIBERTAD N. 17 SAN FRANCISCO TULIQUIL  
 REG. FED. CONT. YNA891406340 REG. EX. T. 1333 MEX.

**CONTROL DE ACOPIO DE CAFÉ PERGAMINO ORGANICO**  
**COSECHA 2009 - 2010**

Municipio: Ixtlán de Juárez

| No | Código | Apellido Paterno | Apellido Materno | Nombre (s)     | Clave CMC  | Estimacion de cosecha | SUMA KILOS NETOS |
|----|--------|------------------|------------------|----------------|------------|-----------------------|------------------|
| 1  | 50302  | Hernandez        | Pablo            | Manuel         | 1971695    | 320.00                | 320.0            |
| 2  | 50303  | Mendez           | Ramos            | Imba           | 1971873    | 1,500.00              | 1,101.0          |
| 3  | 50305  | Ramos            | Hernandez        | Alfara         | 1971698    | 800.00                | 590.0            |
| 4  | 50308  | Berz             | Ramos            | Esteban        | NO CENSADO | 500.00                | 194.5            |
| 5  | 50312  | Mendez           | Arreola          | Mario Arreola  | 1971707    | 500.00                | 501.5            |
| 6  | 50315  | Ruiz             | Francisco        | Luis           | 140001739  | 250.00                | 269.0            |
| 7  | 50321  | Pablo            | Ramos            | Rosario        | 1971593    | 700.00                | 345.0            |
| 8  | 50323  | Pablo            | Perez            | Rosendo        | 1971588    | 500.00                | 242.0            |
| 9  | 50324  | Jerónimo         | Santiago         | Melesio        | 140591229  | 600.00                | 432.0            |
| 10 | 50325  | Ramos            | Jerónimo         | Ramón          | NO CENSADO | 500.00                | 168.0            |
| 11 | 50326  | Gomez            | Madrinas         | Arnulfo        | 1971699    | 500.00                | 273.0            |
| 12 | 50327  | Martinez         | Garcia           | Antonio        | 1971673    | 300.00                | 240.0            |
| 13 | 50328  | Mendez           | Arreola          | Dalia          | 1405780039 | 350.00                | 283.5            |
| 14 | 50329  | Jerónimo         | Perez            | Juan           | 1971695    | 500.00                | 316.5            |
| 15 | 50332  | Perez            | Manuel           | Juan Carlos    | 1971748    | 300.00                | 295.0            |
| 16 | 50334  | Arreola          | Lopez            | Juan Carlos    | 1405961700 | 1,500.00              | 864.5            |
| 17 | 50335  | Garcia           | Hernandez        | Cristina       | 1403812259 | 300.00                | 314.0            |
| 18 | 50336  | Jerónimo         | Hernandez        | Rosetida       | 1400208416 | 414.00                | 383.0            |
| 19 | 50337  | Francisco        | Pablo            | Francisco      | 1971593    | 500.00                | 122.0            |
| 20 | 50338  | Galegos          | Francisco        | Esmer Antonina | 1405790    | 08                    | 625.00           |
| 21 | 50339  | Martinez         | Francisco        | Rodella        | 1405780    | 29                    | 400.00           |
|    |        |                  |                  |                |            | <b>11,859.0</b>       | <b>7,819.5</b>   |



JUXTLAHUACA

TLAXIACO

TLAXCALA

JAMILTEPEC

NOCHIXTLAN

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# Written, visual, or electronic form



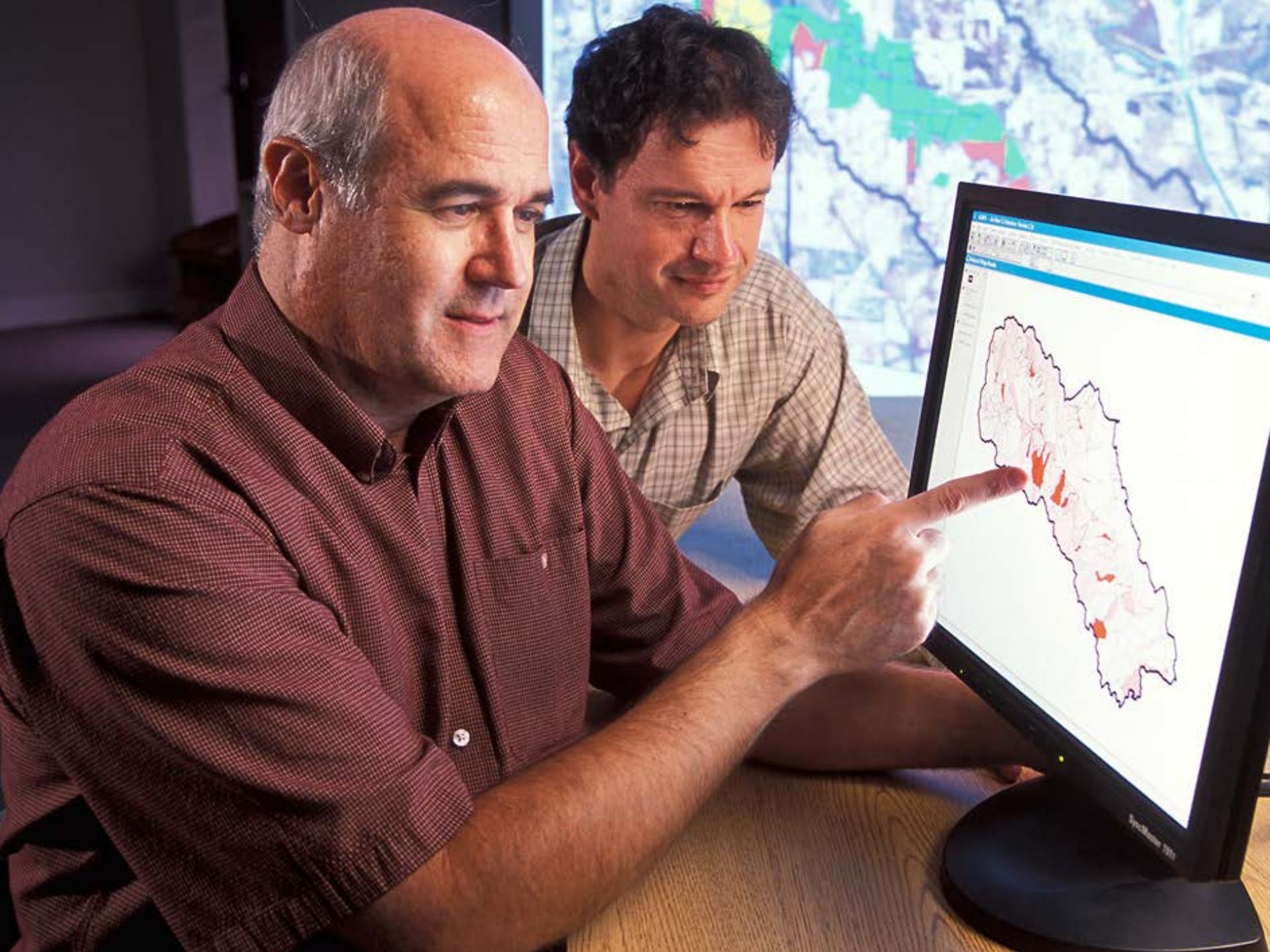
What does “written, visual, or electronic” mean?

- Multiple possibilities for compliance
- Do not have to be tangible or paper-based
- Visual or electronic records can replace printed or written records

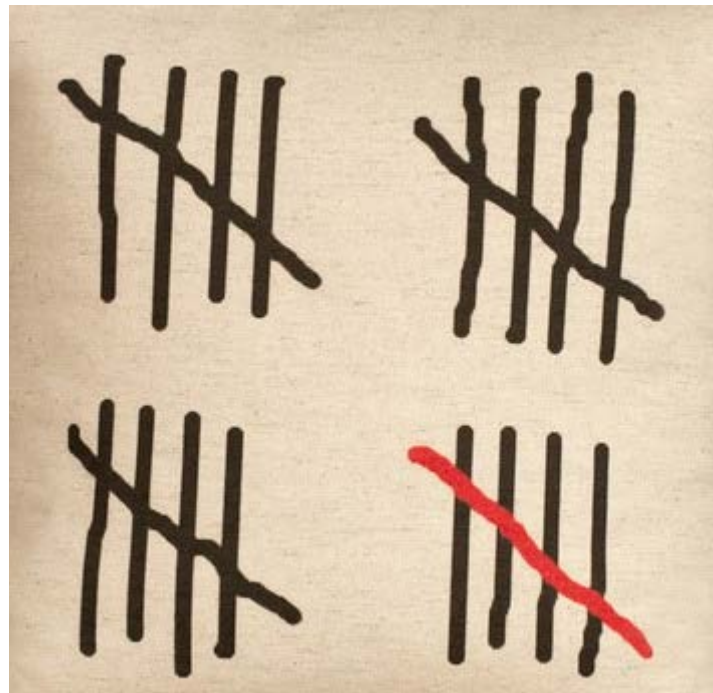
# Examples of visual records



- Photos
- Videos
- Drawings or sketches
- Illustrations of procedures
- Non-written marks
  - Hash marks, chalk marks, machete marks on wood, etc.







# § 205.103 Recordkeeping by certified operations



- (a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products ... (b) Such records *[written, visual, or electronic]* must:
- (1) Be **adapted** to the particular business that the certified operation is conducting;
  - (2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be **readily understood and audited**;
  - (3) Be maintained for not less than 5 years beyond their creation; and
  - (4) Be sufficient to **demonstrate compliance** with the Act and the regulations in this part.

# Records example – §205.103(b)(1)



**ORGANIC EGGS**

**R. W. SAUDER, INC.** | 0518076  
 LITITZ, PA. 71 | — FRESH EGGS  
 DATE: 12-10 | TRAILER NO. 277

Bought From: [Redacted]  
 Address: [Redacted]

| LOT NO.                            | ORGANIC BR 1 - 2 |       |        | GRADE OUT:                          |                       |
|------------------------------------|------------------|-------|--------|-------------------------------------|-----------------------|
|                                    | CARTS            | SKIDS | GRADE  | (OFFICE USE ONLY)                   |                       |
|                                    | 14               | 15    | 174    | <input checked="" type="checkbox"/> | CANDLED               |
|                                    |                  | 24    | 30     | <input type="checkbox"/>            | DOZENS                |
|                                    | Cases            |       | Dozens |                                     |                       |
| Ungraded                           | 42               |       | 1260   |                                     | A JUMBO               |
| Producer                           |                  |       |        |                                     | A EX. LARGE           |
| Crax                               |                  |       |        |                                     | A LARGE               |
| Jumbo                              |                  |       |        |                                     | B LARGE               |
| Loss                               |                  |       |        |                                     | A MEDIUM              |
| <b>TOTALS</b>                      | 42               |       | 1260   |                                     | B MEDIUM              |
| *READINGS TO BE TAKEN UPON ARRIVAL |                  |       |        |                                     |                       |
| *Temp. 49                          | °*Hum. -         |       |        | %                                   | A PULLET              |
| Arrival Time: 1:00                 |                  |       |        | AM                                  | B PULLET              |
| Empty Carts on Hand -              |                  |       |        | PM                                  | A & B P. W            |
| Empty Skids on Hand -              |                  |       |        |                                     | CRAX                  |
| Boards on Hand -                   | 3                |       |        |                                     | DIRTIES               |
| Pulp Flats on Hand -               |                  |       |        |                                     | LOSS                  |
| Plastic Flats on Hand - 5 stock    |                  |       |        |                                     | TOTAL                 |
| Full Carts of Eggs Remaining -     |                  |       |        |                                     | <b>SAMPLE WEIGHTS</b> |
| Full Skids of Eggs Remaining -     |                  |       |        |                                     |                       |
|                                    |                  |       |        |                                     | AVERAGE               |

REMARKS

PRODUCER COPY

# Examples cont'd



Pasture - April 2010

April 16-30 51 Head of Cattle  
Cows - 37 head AVE wt 1300 lbs

|                          |              |              |                  |
|--------------------------|--------------|--------------|------------------|
| grain intake             | 25.5 lbs p/d | $\times .04$ |                  |
| hay intake               | 13.3 lbs p/d |              | <b>52.00 lbs</b> |
| total                    | <b>38.8</b>  | $- 38.8$     |                  |
| Dry matter intst pasture |              |              | <b>13.2 lbs</b>  |

**25.3%** dry matter intake  
From pasture

1 Bull ♀  
11 Heifers run with cows Receive no grain

Ave wt 1000 lbs

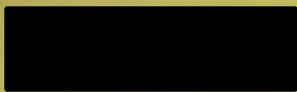
|             |              |                 |
|-------------|--------------|-----------------|
| hay intake  | 13.3 lbs p/d |                 |
|             |              | 40.165          |
|             |              | $- 13.3$        |
| pasture D/M |              | <b>26.7 lbs</b> |

**66.75%** D/M From pasture





- Records must be adapted to the particular business
- There does not have to be a record for every activity
- Inspector observations, interviews can verify compliance



HC: Complete first 5 columns (crop, lbs harvested, lbs culled, # of units) and check when done!  
 Marketeers: Complete remaining 6 columns (price, amt remaining, units sold, total \$ sales, sold out/what time)

Day/Date: \_\_\_\_\_ HC: \_\_\_\_\_  
 Mkt: \_\_\_\_\_ Mkt Manager: \_\_\_\_\_

| Crop | # lbs. Harvested | # of lbs. Culled | # of Units | Done | Marketeers:           |               |                  |                |           |       |
|------|------------------|------------------|------------|------|-----------------------|---------------|------------------|----------------|-----------|-------|
|      |                  |                  |            |      | Price per unit or lb. | Amt Remaining | Total Units Sold | Total \$ Sales | Sold out? | Time? |

The Harvest Coordinator (HC) fills this out during market prep, and the "Marketeers" weigh + record amounts remaining. After market all of this gets transferred to a master spreadsheet.

|   |      |  |  |  |  |  |  |  |  |  |
|---|------|--|--|--|--|--|--|--|--|--|
| Estimated total                                     | 0.00 |  |  |  |  |  |  |  |  |  |
| Actual total (in cashbox, after \$75 starting bank) |      |  |  |  |  |  |  |  |  |  |
| difference between estimate and actual              |      |  |  |  |  |  |  |  |  |  |
| Produce total                                       |      |  |  |  |  |  |  |  |  |  |
| Merchandise total                                   |      |  |  |  |  |  |  |  |  |  |
| Staff stipend                                       |      |  |  |  |  |  |  |  |  |  |
| Vendor fee  |      |  |  |  |  |  |  |  |  |  |
| Farmers market net                                  |      |  |  |  |  |  |  |  |  |  |



Remember: Good recordkeeping is essential to any farm enterprise! This information will be transferred to a master spreadsheet, and shared with all of you via Google Docs, so that you can see how we're doing!





# Appropriate recordkeeping examples



- A dairy farmer uses his barn calendar to mark days on pasture, milking, birth, death, breeding, and healthcare treatments
- A processing plant has a log book for purging before organic product runs
- A vegetable grower keeps a spreadsheet to track attempts to source organic seeds

# Insufficient recordkeeping examples



- A parallel custom slaughter facility does not keep any records which identify the organic status of products
- A beef cattle operation does not record whether purchased animals were organic
- A wild crop collection house records the quantity of incoming harvest by number of buckets, but records outgoing sales by weight

# Excessive recordkeeping examples



- The operation has a clean-out procedure but is cited because the signature on it is not from the current manager
- An inspector requires a list of make, model, and ownership of all equipment used and rented
- Although the OSP describes procedures for separating conventional and organic milking, the certifying agent cites them for not having a written procedure

# Important



- Records help to verify compliant practices but are not a substitution for observations and interviews

# Certifying agent responsibilities



- Verify that operations maintain records as specified in § 205.103
- Be practical and reasonable
  - Is the record necessary?
  - If so, could it exist in more than one form?
- Communicate with inspectors and review staff about appropriate practices



# Audit trails & traceability



- Important exercises during inspections
  - In/out balance of organic products
  - Traceback audits of production lots
  
- Do not have to be paper based
  - Electronic & visual records also accepted

# Certifying agent responsibilities



- Verifying the compliance of the OSP with 205.201, including an adequate description of recordkeeping systems
- Communicating these requirements to operations, including adverse actions, if appropriate
- Providing proper information to and oversight of inspectors
- Evaluating inspectors on an annual basis

# Certifying agent responsibilities



Remember that your inspector's/staff's comments shape a client's understanding of requirements

- Communicate with inspectors and staff on appropriate requirements, multiple possibilities for compliance
- Ensure that staff are following appropriate policies

# Certifying agent responsibilities



- Communicate “records” definition:
  - Written
  - Visual
  - Electronic
- If an inspector cites insufficient records in their findings, make the inspector explain **why** the records did not demonstrate compliance

# Certifying agent responsibilities



Provide frequent **training and feedback** to inspectors and review staff about records

- Ensure that they understand and verify regulatory requirements
- If they are on target, provide **positive feedback**
- If they are too lax or too strict, **explain** proper compliance requirements

# Key points for “adequate records”



Adequate records should:

- Be **adapted** to the individual operation
- Fully disclose all activities and transactions, but:
  - Only in sufficient detail as to be **readily understood and audited**
- Be **sufficient to demonstrate compliance** with the USDA organic regulations

# Summary



- The regulations allow **multiple forms** of records: written, visual, electronic
- Certifying agents must communicate recordkeeping requirements clearly to both **clients and staff (including inspectors)**
- If staff allow inadequate records, or require excessive records, certifying agents must intervene