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
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
§ 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

January 15, 2013
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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
Key message

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 ...
(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.
• 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

Inform operation of impact on compliance

Determine if the change requires submission of records/documentation

Update the operation’s file with the new information

No

Do not require notification or updates
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
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
Annual organic system plan updates:

- Must include enough information to demonstrate compliance
- Should only describe changes
- Should not repeat all previously submitted information
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.
Sound and sensible

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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National Organic Program
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
§ 205.2 Terms Defined

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.”
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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 Record Form](image)

#### ORGANIC EGGS

**R.W. Sauder Inc.**

**Loretto, PA. 27**

**STATE:**

**Address:**

- **LOT NO.**
- **ORGANIC BR 1-2**
- **GRADE OUT:**
- **(OFFICE USE ONLY)**
- **CANDLED**
- **DOZENS**
- **14**
- **15**
- **16**
- **17**
- **18**
- **30**

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- **Ungraded**
- **Producer**
- **Crax**
- **Jumbo**
- **Loss**

**TOTALS**

42 1260

**REMARKS**

**PRODUCER COPY**

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**USDA Agricultural Marketing Service | National Organic Program**

[13]
Pasture - April 2010

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

grain intake 25.5 lbs p/d x .04
Hay intake 13.3 lbs p/d 52.00 lbs

Total 38.8
Dry matter intake 3.2 lbs

25.3% dry matter intake
From pasture

1 Bull
11 Heifers run with cows receive no grain
Ave wt 1000.165

Hay intake 13.3 lbs p/d

40.165
- 13.3

Pasture O/M = 26.7 lbs

66.75% O/M from pasture
Records

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

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<th>HC:</th>
<th>Marketeers:</th>
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<tr>
<td>Crop</td>
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<td># lbs. Harvested</td>
<td># of lbs. Culled</td>
<td># of Units Done</td>
<td>Price per unit or lb.</td>
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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.
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
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.