



Investigations & Administrative Proceedings

January 14, 2016

National Organic Program

USDA Agricultural Marketing Service



Today's Topics



Introduction

Part I: Investigation by Certifiers

- A review of your authority and obligations to investigate allegations of violations of the OFPA and the regulations by your clients, as well as appropriate investigation methods

Part II: Administrative Proceedings

- A review of the administrative hearing process and the need for legally sufficient documents and testimony in court

Questions?

Part I: Investigations by Certifiers



Authority for Investigations



A certifying agent may investigate complaints of noncompliance with the Act or regulations of this part concerning production and handling operations certified as organic by the certifying agent. A certifying agent must notify [NOP] of all compliance proceedings and actions taken pursuant to this part.

7 CFR 205.661(a)

Investigations Methods Required



A private or governmental entity seeking accreditation as a certifying agent must submit the following documents ...

(b)(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.

7 CFR 205.504(b)(2)

Investigations: What are the Methods?



- Same methods (and authority) you use to inspect
- Appropriate to the nature and scope of the allegation(s)
- Adequate to determine compliance or noncompliance

When You Need Help Investigating



- You lack the resources or the specialized expertise needed to adequately investigate the complaint;
- You believe a civil penalty may be warranted for the knowing sale or labeling of agricultural products in violation of the USDA organic regulations;
- You believe the complaint warrants a criminal investigation;
- For some other reason, you cannot carry out or complete the investigation.

Part II: Administrative Proceedings



Why Would You be in Court?



Any person may appeal an action taken by a certifying agent that adversely affects that person.

7 USC 6520 (a)

Why Would You be in Court?



- An applicant for certification may appeal a denial of certification.
- A certified operation may appeal a proposed suspension or a proposed revocation.

The AMS Administrator reviews and decides on those appeals.

7 CFR 205.681(a)

Appeal Process



Administrative Proceedings



RULES OF PRACTICE GOVERNING FORMAL ADJUDICATORY ADMINISTRATIVE PROCEEDINGS INSTITUTED BY THE SECRETARY



COMPILED APRIL 20, 2005

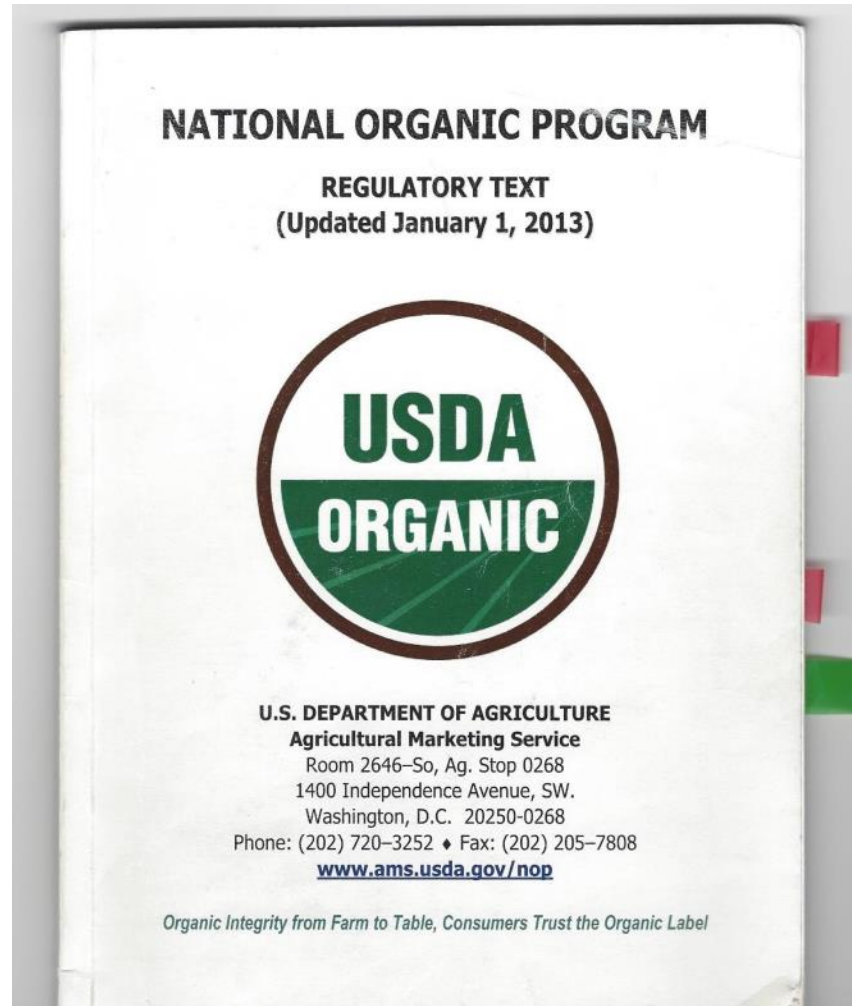
UNITED STATES DEPARTMENT OF AGRICULTURE

If You are Called to Testify as a Witness in an Administrative Proceeding



- You will likely receive a subpoena.
- You may be cross-examined, under oath.
- Inspection report(s), certifier reports and other written documents may be entered as exhibits. You may be questioned about them.
- If you are a government witness:
 - The NOP will pay for your expenses.
 - USDA will help you prepare for the hearing.

Inspection Reports, Compliance Documents and Administrative Proceedings



The Organic Foods Production Act (OFPA)



(1) to establish national standards governing the marketing of certain agricultural products as organically produced products;

(2) to assure consumers that organically produced products meet a consistent standard; and

(3) to facilitate interstate commerce in fresh and processed food that is organically produced.

7 USC 6501

Inspection under the Regulations



Inspection. The act of examining and evaluating the production or handling operation of an applicant for certification or certified operation to determine compliance with the Act and the regulations in this part.

7 CFR 205.2

Inspection under the Regulations



The regulations authorize and generally define inspection by certifiers in several places:

- 7 CFR 205.400(c)
- 7 CFR 205.403
- 7 CFR 205.404(a)
- 7 CFR 205.406
- 7 CFR 205.501
- 7 CFR 205.670

Inspection under 7 CFR 205.403(c)



Verification of information. The on-site inspection of an operation must verify:

- (1) The operation's compliance or capability to comply ...;
- (2) That the information, including the organic production or handling system plan, provided ... accurately reflects the practices used or to be used...;
- (3) That prohibited substances have not been and are not being applied to the operation....

Inspections and Investigations: Conclusion



- You inspect and investigate organic operations to verify compliance with the OFPA and the USDA organic regulations.
- Except as required, inspection reports and compliance documents should concern *only* your determinations concerning compliance.*

* You may be required to provide additional related information, e.g. appeal rights, by the regulations.

Writing Inspection Reports and Compliance Documents: Tips



OCIA International, Inc.
Organic Crop Improvement Association
 6400 Cornhusker, Suite 125 ♦ Lincoln NE 68507-3160 ♦ USA
 Phone: (402) 477-2323 ♦ Fax: (402) 477-4325
 E-mail: info@ocia.org ♦ Web Site: <http://www.ocia.org>

OCIA Organic Farm Inspection Report/Checklist

Please mark "X" in appropriate boxes. Do NOT use an asterisk. Mark any sections that do not apply as "Not Applicable".
 Answer all questions that are not shaded and those that are applicable to the program(s) being specifically requested,
 unless the party being inspected gives instructions to answer the additional questions (shaded questions noting
 applicable programs).

SECTION 1: General Information and Identification		Potential Major Noncompliance Noted <input type="checkbox"/> Check if yes. List details in Section 14.
Certification Type: <input type="checkbox"/> New <input type="checkbox"/> Recertification (First Year Certified: _____)		
Programs Requested Per Application: <input type="checkbox"/> OCIA/IFOAM <input type="checkbox"/> NOP <input type="checkbox"/> CAAQ <input type="checkbox"/> JAS <input type="checkbox"/> EU 2092/91 (verification) <input type="checkbox"/> Swiss Ordinance (verification) <input type="checkbox"/> JAS Equivalency <input type="checkbox"/> Bio-Suisse	Programs Actually Being Inspected For: <input type="checkbox"/> OCIA/IFOAM <input type="checkbox"/> NOP <input type="checkbox"/> CAAQ <input type="checkbox"/> JAS <input type="checkbox"/> EU 2092/91 (verification) <input type="checkbox"/> Swiss Ordinance (verification) <input type="checkbox"/> JAS Equivalency <input type="checkbox"/> Bio-Suisse	
*Please ensure that the inspection is only conducted for programs whose standards you know and understand. If you are not aware of a particular set of standards or do not feel that you have a good understanding of them, please do not indicate that you inspected to these standards.		
Does the applicant have current copies of the standards for each program that was originally requested per the application? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, please note which standards are missing.		
Does the applicant have current copies of the standards for each program for which the actual inspection will cover? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, please note which standards are missing.		
Are the programs that are being requested for certification this year the same as those requested for certification at the last inspection? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, please note the discrepancy.		
Operator:	Inspector:	
Operation Name:	Inspector #:	
Address:	Date Inspected:	
	Time Arrived:	
	Time Departed:	
Telephone:	Person Interviewed:	
Fax:	Operation E-mail:	
Producer #:	Associate (Member) #:	
Number of years: _____ As an organic farmer _____ Certified _____ Farming the operation		
Status of operation: <input type="checkbox"/> Organic only <input type="checkbox"/> Mixed production <input type="checkbox"/> Parallel production		

Tip #1: Limit Your Written Findings to Observations Regarding Compliance



- Do not add personal asides.
- Do not give advice or consulting services to the operation (in documentation or in person)
- Do not make recommendations for action by the Certifier (in inspection reports).

Advice and Consulting



Inspectors and certifiers may not:

- Provide advice on how a specific operation can overcome barriers to certification;
- Suggest that the certification process would be simpler, easier, or less expensive if specific activities were undertaken; or
- Suggest actual changes to an operation's system or OSP that would bring an operation into compliance.

NOP 2614, *Technical Assistance*

Advice and Consulting: Continued



Inspectors and Certifiers may:

- Explain the regulations;
- Provide information on well-known alternatives for overcoming problems, provided that they are available to everyone;
- Suggest alternatives in accordance with published decisions or the NOP program handbook, but ensuring the operation understands their responsibility for choosing compliant methods.

NOP 2614, *Technical Assistance*

Tip #2: Accuracy



- Your documents should clearly and accurately describe your inspection or compliance findings.
- Be honest and don't exaggerate.

Tip #3: Provide Enough Detail



- Provide information adequate to show compliance or noncompliance.
- Don't write too much; don't speculate about what the operation should have done.
- Provide regulatory citations.

Organic Integrity



Accurate, clear and objective inspection reports and compliance documents, with the appropriate level of detail, are essential for ensuring the integrity of the organic seal.

Questions

