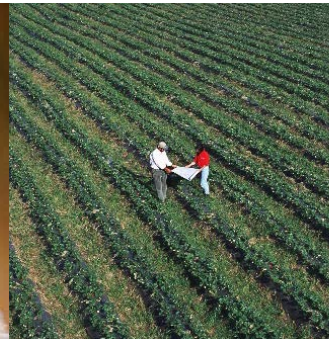




# Temporary Variances

January 15, 2013

Cheri Courtney Accreditation and International Activities  
Certifying Agent Training, Orlando, FL  
USDA Agricultural Marketing Service  
National Organic Program



# Today's Objectives:



- Temporary variances the NOP has issued in 2012
- How to request temporary variances
- Responsibilities of certified operations, certifying agents/State organic programs
- Available resources to justify temporary variance requests
- 2013 Verification of Compliance



# 2012 Temporary Variances



- Nine Requests
  - 7 Granted
  - 2 Denied
  
- Predominant request
  - 30% dry matter intake requirement reduced to 15%

# 2012 Pasture Rule Nationwide Variance



- Nationwide temporary variance was issued for counties designated as primary or contiguous natural disaster areas
  - Non-irrigated pasture only
  - 30% dry matter intake requirement reduced to 15%
  - Only applied to 2012 grazing season

# 2012 Site-Specific Pasture Variances



Different restrictions, based on objective evidence submitted with request

- WY: 15% DMI from pasture
- CO: 10% DMI from pasture
- New Mexico: 80-day grazing season
- TX: 60day grazing season

# 2012 Temporary Variance Denials



- Two requests denied for pasture regulations because they:
  - Had access to irrigation
  - Requested use of uninspected, non-certified grazing land

# Temporary Variance



NOP issues/posts approvals and denials at <http://1.usa.gov/current-temporary-variances>



# Eligible Temporary Variances



Temporary variances may be issued for:

- (1) Natural disasters declared by the Secretary;
- (2) Damage caused by drought, wind, flood, excessive moisture, hail, tornado, earthquake, fire, or other business interruption; and
- (3) Practices used for the purpose of conducting research or trials of techniques, varieties, or ingredients used in organic production or handling.

# Ineligible Temporary Variances



The NOP will not approve temporary variances for:

- Feeding non-organic feed to livestock
- Applying prohibited substances to land or utilizing prohibited materials in processing
- Using genetically modified seeds or other products of excluded methods

# Requesting Temporary Variances



NOP 2606 Instruction: Processing Requests for Temporary Variances outlines requirements for temporary variance requests

[www.ams.usda.gov/NOPProgramHandbook](http://www.ams.usda.gov/NOPProgramHandbook)

# Certified Operations Must:



1. Submit written requests to the certifying agent or state organic program
2. Provide justification, with documented objective evidence, showing:
  - a) Severity and impact of natural disaster
  - b) Necessity of temporary variance to achieve research objectives

# Certifying Agents & SOPs Must:



1. Evaluate written requests from certified operations
2. Recommend new temp. variances to the NOP
3. Provide justification, with documented objective evidence, in support of any recommendation or request
4. Inform all clients who may be impacted by newly-granted temporary variances
5. Request notification from clients who use temporary variances

# Demonstrating the Need



For NOP to consider requests from certifying agents:

- Request must include objective evidence to demonstrate the need
- Requests for a specific operation/region must demonstrate the unique need

# Sources of Objective Evidence



Sources of objective evidence:

- USDA Natural Resources Conservation Service
- USDA Farm Service Agency
- USDA National Ag. Statistics Service
- Cooperative Extension Service
- Land Grant Universities
- Professional/industry organizations

# Processing Temporary Variances



- NOP will evaluate recommendations for:
  - Completeness - 3 Days
  - Assess the request against allowed categories - 7 days
  - Incomplete
    - obtain additional information or details
- Recommendations will be sent to the Administrator
- Issue a Letter of Decision



# 2013 Verification of Compliance



- How can certifying agents verify compliance with the 2012 pasture temporary variances?
  - Identify clients located in affected counties
  - Determine whether client has access to irrigation
  - Verify number of days livestock were on grazing on pasture
  - Ask inspectors to verify this information on site and document it in the inspection report

# 2013: Requesting Temporary Variances



- Must include documented objective evidence to demonstrate the need for the temporary variance
- Unless the NOP has approved an applicable temporary variance, certifying agents must enforce the USDA organic regulations

# Summary



- 2012 drought resulted in multiple temporary variances for organic pasture
- NOP 2606 Requesting Temporary Variances
- Certifying agents must submit documented objective evidence
- In 2013, certifying agents must follow up with operations using temporary variances to ensure compliance



# 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



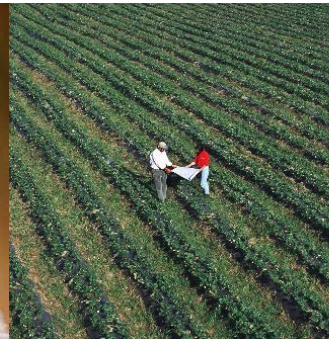
- Evaluate the situation to determine whether it is unsafe
- Do not oblige staff to perform duties in unsafe situations
- Issue notices of noncompliance or take adverse actions, as appropriate
- Report threats to the NOP



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

January 15, 2013

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



# 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**:

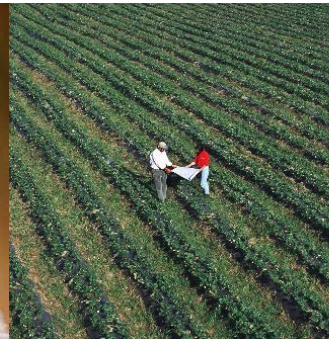
- Only request those updates which may affect compliance
- Educate clients on your requirements



# Adequate Records

January 15, 2013

Certifying Agent Training, Orlando, FL  
USDA Agricultural Marketing Service  
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





## 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



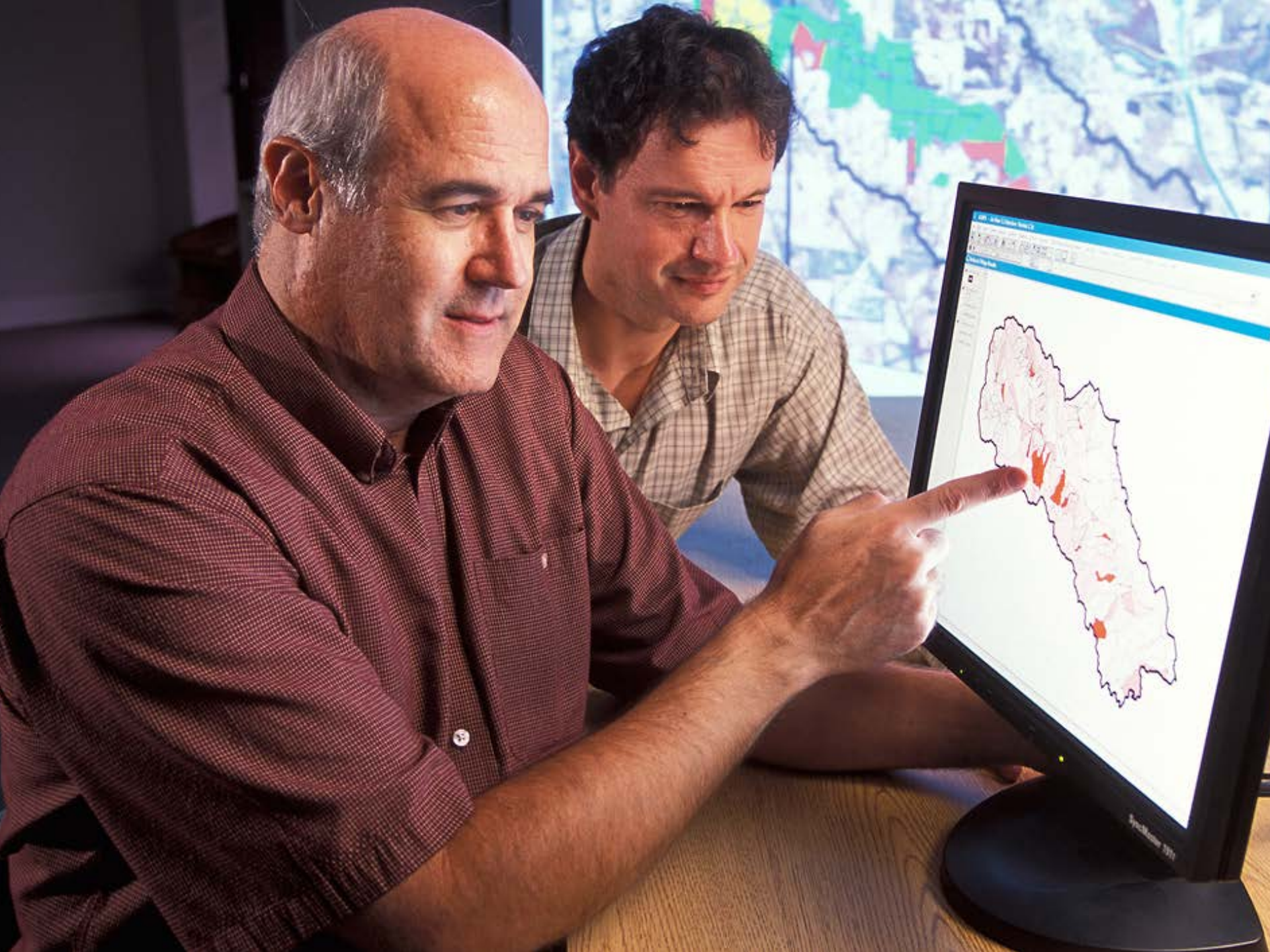
What does “written, visual, or electronic” mean?

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

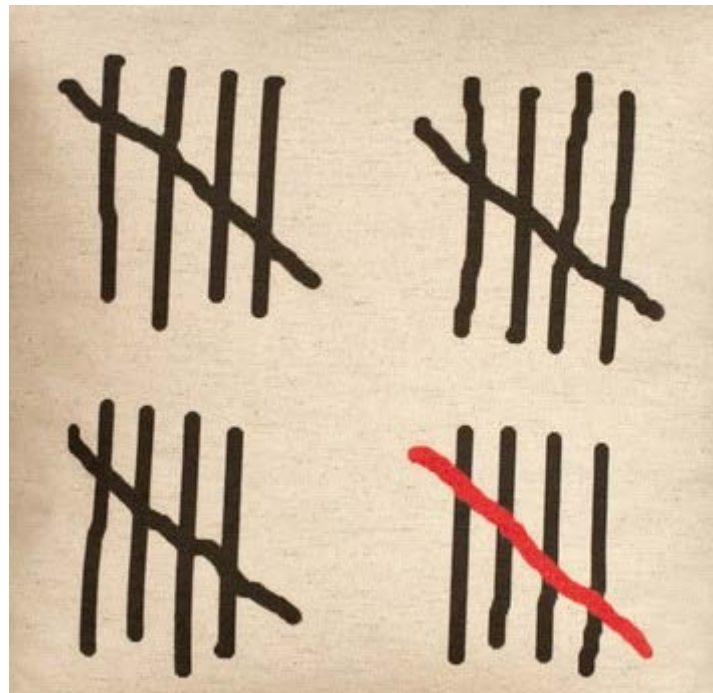
# Examples of visual records



- 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. 2777

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					B PULLET
Empty Carts on Hand -					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		$\boxed{52.00 \text{ lbs}}$
total	$\boxed{38.8}$	$- 38.8$	
Dry matter intst pasture			$\boxed{13.2 \text{ lbs}}$

$\boxed{25.3\%}$  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

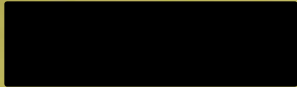
	40.165
	$- 13.3$
pasture D/M	$\boxed{26.7 \text{ lbs}}$

$\boxed{66.75\%}$  D/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



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:

Marketeers:

Crop	# lbs. Harvested	# of lbs. Culled	# of Units	Done	Price per unit or lb.	Amt Remaining	Total Units Sold	Total \$ Sales	Sold out?	Time?
<p>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.</p>										
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