



Organic Enforcement

Ensuring Consistent and Effective Compliance
through Inspection and Enforcement

February 10, 2015

Little Rock, Arkansas

USDA Agricultural Marketing Service

National Organic Program



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



Section 6505 Compliance requirements

- (a)(1)(B) – no person may affix a label to,
- or provide other market information concerning,
- an agricultural product if such label or information implies,
- directly or indirectly,
- that such product is produced and handled using organic methods,
- except in accordance with this chapter.

Inspection and the Law: the OFPA



(a) IN GENERAL. – A program established under this chapter shall—

...

(5) provide for annual on-site inspection by the certifying agent of each farm and handling operation that has been certified under this chapter;

7 USC 6506



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 and the Law: the Regulations



The regulations authorize and generally define inspection 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 205.660
- 7 CFR 205.670



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....



- Observations
 - Borders, soil, storage areas
- Interview
 - There doesn't have to be a record for everything
- Records
 - Must be adequate,
 - Reasonable and aligned with OSP.
 - Records don't take the place of observation and interviews of actual practices.

Inspection and the Law: Conclusion



- You inspect organic operations to verify, compliance with the OFPA and the USDA organic regulations.
- Your inspection report should concern *only* your determinations concerning compliance.

Inspection and the Law: Exit Interview



Exit interview. The inspector must conduct an exit interview with an authorized representative of the operation who is knowledgeable about the inspected operation to confirm the accuracy and completeness of inspection observations and information gathered during the on-site inspection. The inspector must also address the need for any additional information as well as any issues of concern.

7 CFR 205.403(d)

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



- Do not add personal asides.
- Do not make recommendations for action.
- Do not give advice or consulting services to the operation (in the notice, report or during the inspection).

Notices and Inspection Reports: Personal Asides



Don't Write:

- *This is the best dairy operation I've ever seen.*
- *I feel bad for the operator. She's had some hard times lately.*
- *The operator seems dishonest. I don't trust him.*
- *The operator probably isn't able to comply because of his (ethnicity, religious or cultural background, etc.)....*

Tip #2: Accuracy



- Inspection reports and Notices should clearly and accurately describe the findings.
- Just the facts – objective without speculation

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, where necessary and possible.



Don't write **only**:

- *The barn was dirty.*
- *The operator violated outdoor access rules.*
- *Records were incomplete.*

Providing Enough Detail: What to Write



Do write:

Pasture logs showed cattle were denied access to pasture for 26 days during the grazing season. The operation stated that the fences were broken and therefore they could not provide access during that time. This reason is not allowed under 7 CFR 205.239(b), (c) or (d).

Providing Enough Detail: What to Write



Do write:

Pest control methods allowed in 205.206 (a) and (b) have been unsuccessful in controlling rodents. Operation is using Vitamin D₃ in compliance with 205.206(e) and 205.601(g).

Too Much Detail: Speculation about What the Operation Should Do



Don't write:

The operation can't seem to control weeds between the rows and around the buildings. He should have....

Providing Enough Detail: Appropriate Explanation



Do write:

Buffer zones appear to be sufficient because....



- The notices and inspection reports should concern *only* your determinations concerning compliance.
- Provide the appropriate level of detail necessary to explain your findings.



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

Including opinions, personal asides, recommendations in reports/notices may indicate lack of objectivity and inability to enforce regulations.

NOP 4002 – Enforcement and Penalty Matrix



- Revised version published in January 2015

NOP 4002 – Enforcement and Penalty Matrix



- History
- NOP 4002 originally published in 2005 as complaint handling procedures
- Revised in 2010 to summarize NOP enforcement policies
- NOP 4001 now covers complaint handling procedures

Penalty Matrix



- Part of the “Sound and Sensible” initiative
 - Previous version of the Matrix were lengthy and complicated
 - Distinction between need for Minor Issues Letter and need for NONC unclear
- The revised Matrix is simplified, but not substantively different in policy from previous versions of the Matrix with concept of progressive corrective action.

The Penalty Matrix



- Help certifying agents distinguish among the appropriate penalties in response to violations of the USDA organic regulations
- Increase consistency in the penalties issued by certifying agents

Compliance actions



1. Minor Issues – Conditions for New or Continued Certification
2. Notice of Noncompliance
3. Major Noncompliances – Denial or Proposed Suspension of Certification
4. Major Noncompliances (willful violations) – Denial or Proposed Revocation of Certification

Summary

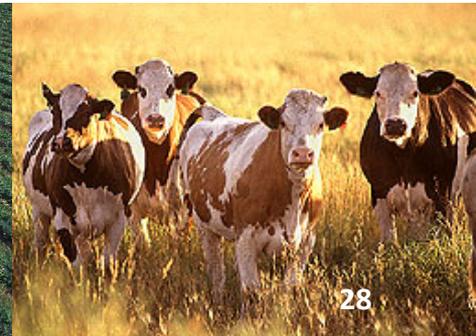


- Goal is to increase consistency among adverse actions and other certification determinations by certifiers
- Important to distinguish minor issues from noncompliances
- Clear, complete, objective evidence is critical for enforcement actions.
- Do not speculate or provide opinions.



Who Needs to be Certified?

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Organic Foods Production Act



“...agricultural product to be sold or labeled as organically produced must be produced only on certified organic farms and handled only through organic certified handling operations....” (emphasis added)

7 USC 6506(a)

USDA Organic Regulations



...each production or handling operation or specified portion of a production or handling operation that produces or handles crops, livestock, livestock products, or other agricultural products that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must be certified....

7 CFR 205.100(a)



- According to the Organic Produce Wholesalers Association –
 - Uncertified entities are not providing sufficient documentation to link a certificate to the physical product.

Who Can Be Certified: Definitions



Person. An individual, partnership, corporation, association, cooperative, or other entity.

Certified operation. A crop or livestock production, wild-crop harvesting or handling operation, or portion of such operation that is certified by an accredited certifying agent as utilizing a system of organic production or handling as described by the Act and the regulations in this part.

Inspection as an Indicator



- Accredited certifiers have the legal authority to inspect certified organic operations or operations seeking organic certification
- If you need to inspect an operation to verify compliance with the USDA organic regulations, that operation is required to be certified

Management as an Indicator



- Organic system plans must describe the procedures used by each operation
- Separate operations with separate management/responsible parties may need separate certification

What is Prohibited



A certified operation may not allow an uncertified operation, under contract or other arrangement, to produce or process products to be sold or labeled as organic, on the uncertified operation's premises

Operations that must be Certified



- Slaughter facility
- Olive press
- Fruit packing facility
- Grain storage
- Grain cleaning
- Leasing grain silo
- Auction barn that represents or sells livestock as organic



Problem Statement: Certifiers are defining and listing certified operations differently. We must identify a shared set of rules of practice so that certifiers consistently and similarly list certified operations – with each operation listed on a certificate also listed in the Organic Integrity database.

Implications for Organic Integrity Database



- The consistency of the lists of certified operations across certifiers will directly impact the success of the Organic Integrity Database, funded by the Farm Bill and now under development.
- Let's turn to a database update....

Questions?

