



Who Needs to be Certified?

February 19, 2014

ACA Training – San Diego, CA

USDA Agricultural Marketing Service

National Organic Program



Today's Training Objectives



- Discuss the legal requirements for organic certification
- Examples of business arrangements that do or do not require operations to be certified

Background - Need for Clarification



- NOP audits and investigations found that certifiers were applying inconsistent criteria regarding who needs to be certified
- In some cases, the NOP has issued Notices of Noncompliance to certifiers
- There are many different business arrangements in agriculture, which can make certification complex

Need for clarification



NOP found:

- Uncertified processors “covered” under another operation’s certification
- Multiple operations on one certificate
- A revoked operation was allowed to process organic food under contract for a certified operation
- An operation listed on a certificate that was not inspected

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)



...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)

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 only 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

What is allowed



A certified operation may:

- Lease land, facilities and equipment
- Purchase or contract for production or processing services conducted on its premises
- Hire an uncertified operation to transport its organic products

What is allowed (continued)



A certified operation may:

- Process organic products using leased facilities or equipment as long as the certified operation is managing the processing activities

What is prohibited



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

Examples



- Slaughter facility
- Olive press
- Fruit packing facility
- Grain storage
- Grain cleaning
- Renting community kitchen
- Leasing grain silo

Next steps



- NOP will assess compliance with this instruction during 2014 audits
- NOP will note a noncompliance if certifiers are not complying with the instruction
- Certifiers not in compliance will need to implement corrective action plans
- NOP will continue to investigate complaints about uncertified operations producing and handling organic products

Benefits and mitigating factors



- Consistency among certifiers means a level playing field for operations
- Certifying more organic operations may provide new opportunities for organic sales
- Resources and support
 - Certification cost share program
 - Technical assistance



Verifying the Legal Status of Operations Seeking Organic Certification

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Today's Training Objectives



- Explain the need for this clarification
- Discuss different types of legal business entities
- Discuss resources for verifying legal status

Why verify the status of operations?



Necessary and important in carrying out certification responsibilities concerning:

- Confirm the identity of certification applicants (205.401(b) and 205.406(a)(2))
- Verification of compliance (204.402(c))

Why verify the status of operations (cont.)?



- Provision of information to the NOP and to the public (205.501(a)(15)(ii) and 205.504(b)(5))
- Adverse Actions – issuing notices and identifying responsibly connected persons

What is a Person?



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

7 CFR 205.2

Types of Business Entities



- Individual/sole proprietorship
- Partnership
- Corporation
- Association
- Cooperative
- Public entity, e.g. university research farm

Where to Verify Operation Status



- Many State websites have directories of licensed businesses (e.g. California, Delaware, Mississippi, Ohio, Washington)
- The Small Business Administration provides links to State licensing offices:

<http://www.sba.gov/licenses-and-permits>

Next Steps



- AMS auditors may inquire about legal status of your clients at your next audit
- Remember – Only one “person” per organic certificate



Questions?

