

Guidance on Handler Distributor-Trader-Broker (with no Physical Handling) Compliance with 205.103 Recordkeeping Requirements

(Note: For the Purposes of this Document, the Terms Handler, Operation, Distributor, Broker and Trader are Used Interchangeably)

Section 205.103 of the USDA National Organic Program regulations describes the general requirements for recordkeeping under the USDA National Organic Program Regulations:

§205.103 Recordkeeping by certified operations.

(a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)).”

(b) Such records 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.

(c) The certified operation must make such records available for inspection and copying during normal business hours by authorized representatives of the Secretary, the applicable State program's governing State official, and the certifying agent.

These requirements are broad. Because of the breadth of these requirements, operations may need more guidance on how to effectively implement these requirements and what the certifying agent is looking for.

Given the variations between operations and different types of production and handler systems it is impossible to give a specific, detailed explanation of how each operation can demonstrate compliance with the regulation. In reviewing records, and thinking about recordkeeping systems, the certifying agent and the certified operation must remember that function controls over form. This means that a recordkeeping system which fully documents all transactions and activities in sufficient detail as to be readily understood and audited by the certifying agent and which demonstrates compliance with the other requirements of the regulation will meet the requirements of section 205.103, even if they don't meet the specific requirements laid out in this guidance document. Assuming the recordkeeping system meets all 205.103 requirements and provides for traceability and mass balance exercises described in section B below, it will be considered compliant.

That being said, there is a common set of core records that every operation should implement and which the certifying agent will expect to be maintained in most cases. This guidance document explains the common set of core records that each handler-packer operation should consider implementing to meet section 205.103 requirements.

A. 205.103(b) (1): Guidance on Required Records for Distributors and Brokers Who Do Not Take Physical Possession During Handling

Generally, a distributor or broker who does not take physical possession of product but instead arranges to have product shipped from another certified organic handler operation to an end buyer should have a plan to obtain, create, and maintain records and documents which record all transactions and activities and which demonstrate compliance. Generally, that would normally include the following documentation:

- Supplier Documentation (Current organic certificates for each supplier, documentation as required by any equivalency agreement) (For co-packers, ensuring that any product distributed or traded under a brand name is listed on the supplier's certificate under that brand name).
- Receiving Records: If the distributor or broker uses any warehouses, or certified facilities to store or otherwise handle products during the time the product is under the distributor or broker's control, and after it leaves the original certified organic source, the distributor or broker must maintain documentation of its receipt by the subsequent handing entity. (Bills of Lading, Receipts, Invoices, etc which include Date of Receipt, Amount Received, Identity, Source and Composition, Supplier Assigned Lot #, Other Assigned Lot #, Organic Status)
- Periodic Physical Inventories for Storage, Warehouses, and Other Handlers Other than the Original Source: If a non-certified warehouse or other exempt or excluded operation takes possession of product on behalf of the distributor or broker, for storage, drop shipping, or other activities, that facility must provide to the broker or distributor periodic inventory documentation. (Actual Physical Counts of Unpacked Ingredients/Crops and Finished/Packed Product)
- Other Removals from Inventory (Records must be Maintained of Product, Crops or Ingredients Removed from Inventory Due to Wastage, Sampling, Employee Gifts, R&D, and Diversion to Non-Organic Sales or Production)
- Shipping Records (Date, Product Shipped, Lot Number, Organic Status, Amount Shipped, To Whom Shipped)
- Sales Records (Date, Product Sold, Organic Status, Amount Sold, Identification of Buyer, Lot #)
- Other Miscellaneous Documentation Necessary to Document Compliance with the NOP regulations: Includes Uncertified Handler Affidavits for warehouses, transporters, and other uncertified operations which are exempt or excluded from the regulation but nonetheless take physical possession of product.
- Other Certified Labels Disclosure: A broker or distributor which has product packed into any label which carries the phrase "Certified Organic by Americert International" when the co-packer is not certified organic by Americert International must ensure that all such labels are submitted to Americert for review and approval before final printing.

A more detailed description of these records is as follows:

Supplier Documentation: For each supplier of organic products or ingredients, the operation must have a plan, policy and a practice of obtaining and maintaining current organic certificates for each supplier. For product which is obtained under (or will be exported and marketed under) a foreign equivalency arrangement (e.g. US-Canada Equivalency Arrangement), the documentation obtained must include verification that the supplier is approved under that equivalency arrangement. For co-packed product which is packaged under the brand name of the distributor or broker by a USDA accredited certifying agent, the broker-distributor must ensure that the exact brand name products are listed on the co-packer's certificate by the co-packers organic certifying agent.

For Example: For organic product that is imported into the US under the US-Canada Equivalency Agreement (or which will be exported to Canada under that agreement) the broker-distributor must have a plan, policy and practice of obtaining documentation from the supplier that they are certified

under the US-Canada Equivalency Arrangement and must maintain this documentation and make it available for review by Americert upon request.

Another Example: For organic product imported into the US under the US-EU Equivalency Agreement or the India-US Equivalency Agreement, the broker-distributor must have a plan, policy, and practice of obtaining (in addition to the organic certificate for the supplier) a copy of the NOP Import Authorization issued for each shipment of product received (issued by the supplier's certifying agent) and must maintain this documentation and make it available for review by the certifying agent upon request.

Receiving Records:

The broker-distributor must have a plan, policy and practice of documenting the receipt of organic ingredients or products on its behalf by uncertified storage, warehouse and transport entities, which includes certain required information. This may be a bill of lading showing the uncertified storage, warehouse or transport entity as the receiving entity, or a receipt generated by the uncertified storage, warehouse or transport entity documenting receipt of the product. Regardless of the form of the documentation, it must include certain mandatory information such as: The identity of the material received, its organic status, the date received, the amount received, from whom it is received. It must also have a lot number or other traceability code assigned to it by the source which is listed in the shipping/transport/delivery document. It is the broker-distributor's responsibility to ensure that any shipment received is accompanied by such a document which contains all the necessary information. If the document lacks the required information, it is the broker-distributor's responsibility to proactively reach out to the supplier or handler and obtain this shipment specific information and to maintain such documentation. All documentation must be maintained and made available for review by the certifying agent upon request.

Periodic Physical Inventories: If product is stored (but not otherwise handled) at subcontracted storage facilities, a broker operation is required to maintain actual periodic physical inventories. An actual periodic physical inventory means that at least once per year, the operation (or storage facility) goes in and actually observes and records the amount of product which is on hand. The actual physical inventory means a count of what is actually there; it is not a generated report of what "should" be on hand; it is an actual count of what is on hand. Periodic means this inventory must be conducted at least once per year for most operations. The inventory must be accurate and it must be recorded. The record should include: the date the inventory was conducted, the products inventoried (listed by unit sizes and product identification/sku, presentations, brand names, etc) and the amount of each on hand. A broker operation must have a plan, policy, and practice which addresses these requirements. All documentation must be maintained and made available for review by the certifying agent upon request.

Other Removals from Inventory: Frequently crops, products, and ingredients are removed from inventory for reasons other than packing events. Such reasons may include gifts and samples, wastage, culling, employee use, internal use, R&D, sampling for testing, and diversion to non-organic sales or packing. Such removals must be recorded such that all organic product and crops can be accounted for. Standard shrinkage due to moisture loss needed not be specifically recorded and culls during packing need not be specifically recorded if they do not exceed a known and specified industry standard or common factor. All other removals from inventory must be recorded in a record. Such a record should

include the date removed from inventory, the identity and organic status of the material removed from inventory and the amount removed. The record must be made at or around the time of removal. A broker operation must have a plan, policy, and practice which addresses these requirements. All documentation must be maintained and made available for review by the certifying agent upon request.

Shipping Records:

The broker must have a plan, policy and practice of documenting the shipping of organic product which is shipped at the direction of the broker. Such records must include certain required information.

A shipping/transport/delivery document must be generated and maintained for each shipment of crop, product or ingredient shipped or delivered. Such a document may include a bill of lading, transfer ticket, or a delivery receipt, if it contains the following information: The identity of the material shipped, its organic status, the amount and form of packaging, the date shipped, the amount shipped, the packer shipping it, to whom it is shipped, and a traceability number such as a lot number. Such records must be made at or around the time of shipping. All documentation must be maintained and made available for review by the certifying agent upon request. In some cases, such as internal transfers from one packer owned facility to another, this may take the form of a log.

Sales Records: A record must be made of each sale of organic product for each shipment or lot sold (or serviced). This record must be made at or around the time of sale or service. Such a record must include what was sold (or serviced), its organic status, and the amount sold or serviced. The record must also identify to whom the product was sold (or charged for the service).

Other Miscellaneous Records: If an aspect of the regulation is documentary in nature or has a documentary component (e.g. phytosanitary documents for unpacked raw crops imported or exported, NOP Import Authorizations for EU product imported in to the U.S., etc) then there should be a corresponding record which demonstrates compliance with that requirement. Some examples include:

- Uncertified Handler Affidavit for subcontracted storage facilities.
- Phytosanitary documents showing that imported organic crops were not treated with prohibited substances in transit.

B. 205.103(b) (2): Guidance on Maintaining Auditable Records for Handler-Packer Operations:

In general, an operation must be able to demonstrate compliance with section 205.103, including section 205.103(b) (2). In demonstrating compliance, functionality controls over form. This means that the recordkeeping system is sufficient if it:

- Can demonstrate that the operation has complied the requirements of the USDA National Organic Program regulations, and;
- Fully documents all transactions and activities in a manner which is readily understood and audited, and;
- Allows traceability of organic products, crops, and ingredients, and;
- Allows a mass balance of outputs or inputs to be conducted.

Traceability of inputs is defined as the ability to select a particular unit of packed product and to identify through records all the sources of organic crops, products, or ingredients which went into the product brokered, distributed or shipped. Generally this can be done using a combination of the sales, shipping, packing, and inventory, receiving, and supplier records.

A mass balance of outputs or inputs is defined as the ability to select a particular crop or type of packed product and to verify through records that there is a reasonable relationship established in the records between the amount of crop, ingredients, or product received, packed, shipped, and sold. Generally this is conducted by reviewing the listed records, but it may also include bank records if necessary.

C. 205.103(b) (3): Guidance on the Requirement to Retain Records for 5 Years After Creation

Operations must have a plan and policy to maintain all records related to certification for 5 years after their creation. Once certified, applicant should be able to produce a requested record if it was created after their date of certification and within the past five years. This would include any record created during certified activities in the previous five years.

D. 205.103(b) (4): Guidance on Ensuring that Records Demonstrate Compliance

Records must be sufficient to demonstrate compliance. If an aspect of the regulation is documentary in nature or has a documentary component (e.g. phytosanitary documents for unpacked raw crops imported or exported, NOP Import Authorizations for EU product imported in to the U.S., etc) then there should be a corresponding record which demonstrates compliance with that requirement. While it is impossible to provide a list of all the records or documents that would be needed to demonstrate compliance given the variety of operations which seek certification, a good starting point for documenting compliance through records is to follow the recordkeeping guidance described in policy in section A above.

E. 205.103(C): Guidance on Making All Records Available During Onsite Inspections

During the inspection you can expect that the inspector will ask to review all of the types of records described in this guidance. They will attempt to conduct one or more exercises such as a traceability exercise and mass balance exercise as described in section B above. They will also request to review other documentation as described as Other Miscellaneous Records in section A above.

It is a broker/distributor's responsibility to make these records available for review, auditing and copying during the onsite inspection. Such records must be provided to the inspector within a reasonable time after the request, during the inspection, and at the site of the inspection. It is solely within the inspector's discretion to determine when the operation has been given a reasonable amount of time to provide a document or record and to conclude that the record is not available or not easily auditable because it cannot be provided in reasonable time. Providing the records after the inspection has concluded is not sufficient to demonstrate compliance. If records will not be at the primary site, and the auditor will need to visit another site to view any records, it is the operation's responsibility to explain this to the certifying agent and the inspector in the submitted application at the time of applying for organic certification so appropriate time and logistics management can be conducted to include the records location in the inspection process.