



# Accredited Certifiers Association, Inc.

*Accredited certifying agents working together to ensure the integrity of organic certification in the United States*

August 30, 2016

Miles McEvoy, Deputy Administrator  
National Organic Program  
U.S. Department of Agriculture  
Room 2646-So. (Stop 0268)  
1400 Independence Avenue SW  
Washington, DC 20250

Dear Mr. McEvoy:

The Accredited Certifiers Association (ACA) convened a Working Group to address the issues surrounding the labeling requirements for products handled by uncertified wholesalers. The Group compiled the attached *Best Practices for Ensuring the Organic Integrity of Products Handled by Uncertified Wholesalers and Distributors* document.

We understand the National Organic Program will be looking at the §205.101(b) *Exclusions* in the near future. We believe that a revision to this section is necessary to include the uncertified wholesalers and distributors in the requirements to be certified. We urge the NOP to address this gap in the organic supply chain in order to improve the integrity of organic products.

The primary issue identified by the Working Group is that the exclusion from the certification requirement for some wholesalers and distributors creates a weakness in the Rule, resulting in an integrity problem in the marketing of organic products, in particular fresh produce. The lack of integrity is compounded by inconsistent labeling requirements.

We agreed that the “Best Practice” is for the entire supply chain to be certified under the NOP Regulation. However, in the interim since the major issue with uncertified operations is traceability and verification that the organic products they are selling are actually certified organic, a product that is only labeled according to §205.307 is not sufficiently identifiable as organic when handled by an uncertified operation because it is not possible to distinguish it from a conventionally labeled product. That is why organic product handled by an uncertified wholesaler must be labeled in compliance with §205.303.

Additionally, in our discussions we also identified the issues below that would assist in improving the verification of organic products handled by uncertified wholesalers and distributors:

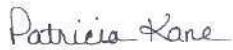
- ~ Revision of the NOP 5031 Guidance to address fresh produce issues
- ~ Additional educational opportunities for uncertified brokers/distributors
- ~ More enforcement emphasis when issues identified

We also identified the very problematic topic of how to address the issue of weak audit trail documentation for produce handled by uncertified distributors / brokers in the event of a food safety recall.

Again, we encourage the NOP to move forward with examination of the *Exclusion* provision. Our Best Practices document provides several examples of problematic issues faced by certified wholesalers when dealing with uncertified wholesalers and distributors in the supply chain, as well as issues identified by certification agencies when dealing with their clients who deal with uncertified wholesalers and distributors.

If you have comments, questions or need additional information, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Kane".

Patricia Kane  
ACA Coordinator

Cc: Cheri Courtney, Director, Accreditation and International Activities Division

Enc.: *Best Practices for Ensuring the Organic Integrity of Products Handled by Uncertified Wholesalers and Distributors*



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## Best Practices for Ensuring the Organic Integrity of Products Handled by Uncertified Wholesalers and Distributors

Version #2,  
7.19.2016

### Summary

Use of the *Best Practices for Ensuring the Organic Integrity of Products Handled by Uncertified Wholesalers and Distributors* document will provide clear documentation and traceability for fresh produce handled by uncertified wholesalers and distributors.

### Introduction

The NOP included information in their 2015 Training Program for Certifying Agents regarding their concern about information they received from organic companies that uncertified wholesalers / distributors were not providing adequate documentation to link a certificate to a physical product.

As confirmed by NOP Guidance 5031, Certification Requirements for Handling Unpackaged Organic Products, the exclusion from organic certification in §205.101(b)(1) only applies to “Produce handlers who do not open, repack, trim, or relabel certified organic products (e.g., bagged salad greens, boxed produce).” This guidance also states that “Unpackaged certified organic products that are handled (other than transported) by an uncertified, non-retail operation lose their certified organic status and may no longer be sold, labeled or represented as organic.”

The NOP 5031 Guidance is sufficient for canned goods or processed products. Additional guidance should be included in NOP 5031 for products not in impermeable or tamper evident packaging such as fresh produce.

Examples of types of packaging used for produce that is not impermeable or tamper proof:



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§205.101(b)(1) states that exclusion from certification only applies “if such operation or portion of the operation only sells organic agricultural products labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))”.

§205.301 references §205.303 as mandatory for labeled products. For §205.301(a) 100% organic and (b) organic products, “If labeled as organically produced, such product must be labeled pursuant to §205.303.”



Packaging compliant with §205.303

§205.307 is only applicable to nonretail containers of labeled produce. “Labeling of nonretail containers used for only shipping or storage of raw or processed agricultural products labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)).”



A nonretail container of produce labeled in compliance with §205.303.

## Working Group Discussions

The ACA Wholesale Distributor Concerns Working Group identified Best Practices to ensure a verifiable audit trail when uncertified wholesalers and distributors are involved in the marketing of organic produce. As part of a verifiable audit trail, ACA's Best Practices also call for labeling of both retail and nonretail containers handled by uncertified wholesalers to be labeled in compliance with §205.303.

Uncertified wholesalers and brokers marketing organic produce pose a severe threat to the integrity of the organic products. This is due to several issues including a lack of oversight of their operations, a lack of understanding of the requirements of the regulation, a lack of training on the requirements of the regulation, and incomplete audit trail documentation. Realistically speaking, organic products marketed by uncertified wholesalers and distributors lack a complete audit trail.

Along with the other identified best practices below, the Working Group is recommending that organic products handled by uncertified wholesalers and distributors be labeled in compliance with §205.303. The exclusion from certification in §205.101(b)(1) is only applicable "if such operation or portion of the operation only sells organic agricultural products labeled as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))".

**Since the major issue with uncertified operations is traceability and verification that the organic products they are selling are actually certified organic, a product that is only labeled according to §205.307 is not sufficiently identifiable as organic when handled by an uncertified operation because it is not possible to distinguish it from a conventionally labeled product. That is why organic product handled by an uncertified wholesaler must be labeled in compliance with §205.303.**

In other words, if a wholesaler gets the "break" of the exclusion from certification clause [§205.101(b)(1)], they can't also get the "break" of the §205.307 labeling clause. It is the combination of these two "breaks" that causes the audit trail to break between a duly certified producer and the certified handlers downstream. A container which contains unlabeled product (see tomatoes photo below) is not compliant labeling for organic product handled by an uncertified wholesaler or distributor because it does not comply with §205.303 as required by §205.301(b).

The Best Practice suggestion below for operators to include the basic information required in §205.303 for all packaged organic produce, including nonretail containers, would improve the consistency of labeling and the traceability of the product.

## Problem

- a) There is no oversight of uncertified wholesalers/distributors in the organic supply chain. This lack of oversight opens the door for errors in documentation, highlights the lack of understanding of regulations regarding commingling which may cause errors allowing conventional products to be mislabeled as organic, and even outright fraud. Issues identified as problematic include:
- private labeling of retail and nonretail containers without a certificate to support the label/certificate claim;
  - relabeling of containers by uncertified wholesalers/distributors which includes the name of the certifier of the product;
  - insufficient documentation of the fresh produce to link a physical product to an organic certificate or producer; or excessive documentation in an effort to mask lack of knowledge of actual source

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- product documentation that does not identify products as “organic”; or product documentation that while organic, is not NOP certified or in compliance with trade agreements or equivalency arrangements
  - insufficient records for traceability of the product;
  - uncertified wholesalers may be opening boxes, possibly repacking, possibly relabeling, thus they do not qualify for the §205.101(b) exclusion
  - product obtained from an uncertified operation takes additional effort by the organic market to trace the product back to a certified organic source. The speed of produce moving through the market may be quicker than the time required to sufficiently trace the product.
- b) In addition, certifiers are not consistently requiring compliance to the same labeling requirements in the NOP regulations. Wholesale produce is perishable and may be distributed by uncertified operations, so timely verification of certified organic status is crucial. Because §205.307(b) requires only a minimum amount of information for traceability, wholesale organic produce is shipped in boxes with inadequate labels; labels that are insufficient and often only display an un-interpretable lot number.



The only label on this container is the – 2ed. There is no indication of whether the product is organic, or who the producer is. The product was marketed as certified organic.

## Case Histories

The following are examples of actual situations that have occurred in the marketing of fresh produce.

- a) A known certified handler purchased product from a non-certified broker who had his private label tag put on each fruit. The product was sold to another certified handler whose expectation of the product did not match any of the labeling or internally approved brands and came from an unexpected country of origin. Enough compliance issues were raised to require further scrutiny. The certifier who was listed on the tag was asked to confirm whether any of the names or brands listed on the box or product tag was certified; the certifier confirmed that they weren't. Even once the second company observed a sticker found on the boxes listing a certified grower that matched the certificate later supplied by the known certified handler, the certifier confirmed that the private brand had never been approved. And further, the certifier confirmed that the grower did not sell to the fresh market; only to the processing market. Having enough information to use to trace the product led to the discovery of fraud, simply due to a certified handler going above and beyond to verify not only the claim on the box, but the claim on the “retail” label. Since no one could supply a certificate listing the private label, the foreign certifier was contacted. Unfortunately, in the weeks prior to this discovery many loads of the product made its way through the market through multiple certified handlers.



- b) Blackberries packed in clamshells, received by a certified produce wholesaler, were labeled as “Love Berries”\*. The clamshell included the “distributed by” information, identified a certifier and used the USDA seal. The uncertified berry distributor, ““Very Fresh Produce””, provided an NOP certificate with the name of “B’s Berries”\*. The certificate did not reference any of the received products’ private label information. The uncertified distributor confronted with the lack of clear documentation stated ‘sorry’ and that they’d ‘get it together next year. We have strawberries ready next week.’

\*fictitious name

In both of these cases, the organic certificates did not list any brand names. The inclusion of brand names on certificates would provide the transparency necessary to verify valid certificates. And in the second case a certificate for blackberries was provided, but there was no information on the shipping cases or the individual clamshells that referenced the grower or packer who appeared on the certificate provided. Additionally, there was no certificate in existence that listed the private label brand. Note that this occurs very often with uncertified marketers representing product under their own, private label brand.

- c) A certified produce distributor contacts a certifier to verify the validity of a certificate they obtained from an uncertified produce distributor. Although the certificate was valid, the certifier contacted the operator listed on the certificate to confirm they were selling produce to the uncertified distributor, but they had never heard of that distributor and did not know how they had obtained a copy of their certificate.

### Best Practice

The Best Practice is the requirement of the entire organic supply and handling chain to be certified. Certification would allow verification of an appropriate system plan including recordkeeping, and provide educational opportunities for certified operations.

- a) Until such time that all handlers of organic products are required to be certified, the following are best practices suggested to ensure traceability of organic products when dealing with uncertified wholesalers and distributors:
- Certified operations, sourcing from an uncertified supplier, must have full documentation/audit trail to trace back to the last certified organic source. This is verified by the certifier on an annual basis.
  - Certified operations requesting additional products be added to their certificate must supply purchase records for the product. Actual purchases should be verifiable within a reasonable interval after the product has been added to the certificate.
  - All sales and transfer documents should clearly identify as “organic” all product being represented as such. Document examples include: bill of lading, purchase orders, transaction certificates and invoices.
  - Require certified operations buying from uncertified distributors to obtain a signed statement from the uncertified distributor affirming that the uncertified distributor:
    - Only handles organic products that are enclosed in a package or container;
    - Does not open the package or container;
    - Does not re-label the package or container;
    - Retains the product in the same package or container for the entire period handled; and
    - Does not process organic products.

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In other words, the uncertified operation must affirm that it receives certified organic products in wholesale or retail containers and distributes them in the same wholesale or retail containers without opening, reconstituting, altering, repackaging, processing, or relabeling the products.

- b) Consistency in labeling requirements include requiring all organic produce handled by uncertified wholesalers and distributors to be labeled in compliance with NOP §205.303. Containers of packaged produce may only be labeled as per §205.307 when the packaged produce in the non-retail container is labeled in compliance with §205.303. For ease of identification, operators should be encouraged to display the mandatory information from §205.303 on the container as well. Examples of such labeled produce could be individual stickers on the produce, produce in clamshell packaging, and labeled bags of produce.

Unlabeled containers of produce that is not individually labeled in compliance with §205.303 (tomatoes photo above) cannot be marketed as organic produce.

- c) Improvements to the certification process will also increase the audit trail transparency. Suggestions include:
- Require handlers to supply a list of suppliers each year with the name of their certifier, date of most recent certificate, and product(s) purchased from that supplier. Uncertified suppliers should also be listed. The list is kept on a spreadsheet so it can be kept up to date without needing to create it new each year. This list is reviewed at least annually at the time of the annual update and confirmed during the inspection;
  - For uncertified handlers, completion of an Uncertified Handler Declaration (example: [Appendix A](#)) could help determine if they are eligible for the §205.101(b)(1) Exclusion from certification;
  - In order to verify previously submitted information and gather any new supplier information, the inspection report should include questions specific to suppliers. (example: [Appendix B](#))

### Relevant National Organic Program Resources

The NOP definition of label is not restricted to retail labels and is broad enough to include all types of package labels:

#### Rule Citations

“Label. A display of written, printed, or graphic material on the immediate container of an agricultural product or any such material affixed to any agricultural product or affixed to a bulk container containing an agricultural product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.”

§205.101 Exemptions and Exclusions from certification

§205.301 Product Composition

§205.303 Packaged products labeled “100 percent organic” or “organic”

§205.307 Labeling of nonretail containers used for only shipping or storage of raw or processed agricultural products labeled as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))."

NOP Guidance 5031 Certification Requirements for Handling Unpackaged Organic Products

<https://www.ams.usda.gov/sites/default/files/media/5031.pdf>





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9. Explain how you maintain audit trail records sufficient to track organic product back to its certified organic source:

10. Do you agree to provide copies of audit trail records to \_\_\_\_\_ upon request? Yes No  
(certifier)

**§ 205.100 (c)** Any operation that:

(1) Knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than the amount specified in §3.91(b)(1) of this title per violation.

(2) Makes a false statement under the Act to the Secretary; a governing State Official, or an accredited certifying agent shall be subject to the provisions of section 1001 of title 18, United States Code.

*I declare under penalty of perjury (under the laws of the United States of America) that the foregoing is true and correct.*

Executed on: \_\_\_\_\_ Signature: \_\_\_\_\_  
(date)

Printed Name: \_\_\_\_\_

## Appendix B

The following are examples of questions on an inspection report used with operations that handle produce from multiple suppliers.

		Yes	No
1. Are all suppliers on the approved Supplier List?			
2. If no, complete a line on the table below for each unlisted supplier found on invoices. Collect a copy of the invoice. Also collect a copy of the supplier certificate if available.			
Supplier Name	ACA Name & Cert Date	Invoice Number & Date	
3. Are any uncertified wholesalers supplying produce to this operation? If yes, please comment below.			
4. Is all produce listed on invoices reviewed at inspection identified as organic?			
5. Is the operation documenting the return/rejection of all products not identified and/or labeled as organic?			
6. Does the packaging on all labeled produce indicate organic status?			
7. Does all organic produce packaging comply with the mandatory parts of §205.303? (Product must be identified as organic and certification body clearly listed below distributor.)			