Accredited Certifiers Association
PO Box 332 Port Richey, FL 34673
(844) 783-7974
www.accreditedcertifiers.org

ACA Best Practices for Cross Agency Investigation

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Purpose

This ACA Best Practices document describes steps certifiers should take to ensure a thorough and consistent approach to collaborative investigations of operations certified to the USDA Organic Regulations. Implementation of these best practices will help assure confidentiality is maintained as appropriate and should increase the likelihood of uncovering fraudulent activity or other non-compliant actions that jeopardize the integrity of the organic label.

This document describes some common challenges related to cross agency collaboration and provides suggested language for communication regarding shared investigative work.

Collaborative Investigations and Confidentiality

Collaborative investigations are used increasingly by certifiers who recognize the value in working together to identify and respond to abnormalities in supply chain documentation or other compliance challenges. As the organic food sector of the farm economy has grown and supply complexity has increased, shared investigations have become an important tool. However, certifiers are bound to protect the confidentiality of the operations they certify. For this reason, some certifiers hesitate to participate in these types of investigations.

§205.501 General requirements for accreditation (a)(10) states that accredited certifiers must: Maintain strict confidentiality with respect to its clients under the applicable organic certification program and not disclose to third parties (with the exception of the Secretary or the applicable State organic program's governing State official or their authorized representatives) any business-related information concerning any client obtained while implementing the regulations in this part, except as provided for in §205.504(b)(5);

The NOP has clarified that, “Accredited certifiers should provide confidential information to other accredited certifiers for the purpose of verifying compliance with the USDA organic regulations. Confidentiality must be maintained.” To this end, we recommend the following language be included in program manuals or other similar documentation distributed to certified operations:

Suggested language for confidentiality sections of certification manuals:

<Name of Certifier> safeguards the confidentiality of any business- related information concerning any client, products, or suppliers obtained during the course of certification. <Name of Certifier> does not disclose any proprietary information to third parties without the client’s written consent prior to release, except to the authorized representatives of the Secretary, the applicable State Organic Program's

Governing State Official, or other authorized representatives of accreditation agencies where necessary to implement the NOP, the State Organic Program, or the <Name of Certifier> certification program. <Name of Certifier> may disclose proprietary information as required by other laws of the United States or other countries in which it performs certification activities, State law or other laws of local governments.

<Name of Certifier> also makes public upon request all certificates, Client Profiles, and any results of laboratory analyses for residues of pesticide and other prohibited substances conducted during the current and 3 preceding calendar years, unless the testing is part of an on-going compliance investigation.

Public information about certified operations is made available in the <Name of Certifier> online and print directories released by <Name of Certifier>, as well as by the National Organic Program.

Certified operations should also be informed of the following: *All organic production and sales information is held strictly confidential except that <Name of Certifier> makes this information available to the USDA Secretary or applicable State Organic Program's Governing State Official in order to carry out its obligations under the USDA NOP.*

Handling of results from third party residue testing

Periodically, certifiers are notified of positive residue test results from a third party. In these cases, certifiers must make special considerations to ensure that the information is followed up on appropriately. The greatest credibility is given to residue test results from another certification agency of the party that was tested. Other third parties may include a downstream buyer, farmers' market manager, government agency, other certifiers, etc. Certifiers notified of third party test results should look for the following information:

- **Chain of Custody** – Chain of custody and audit trail documents from the party who took the samples must conclusively link the results back to the operation. For example: lab chain of custody (COC) document and audit trail documents that directly link to the COC sampled lot.
    - For product from a retailer, handler, wholesaler distributor, or other post-harvest handling source, traceability documentation must include supplier name, supplier certifier, BOL, receiving docs, delivery receipts, lot #, and any other related audit trail documents.
- **Sampling Report** – Complete report from the agency who collected the sample. Report must clearly connect to the chain of custody, demonstrating that the product sampled is the product in the chain of custody. Report must include all relevant sample collection details: who collected, when collected, type of analytic screen used (MRL, single screen), observations of the surrounding area (field or facility), photos of the sampled product and any applicable labels or any other investigation follow-up taken by the sampler.
- **Correct commodity tested** – The lab performed the test on the correct raw or processed product (e.g. when testing sweet corn, the lab should remove the husk and analyze the kernels and cob). If unclear what was tested, follow up with the third party.
- **Correct EPA tolerance** – Levels cited are for the actual commodity that was tested.

Generally, third party documentation is not shared with the certified operation unless it is documentation allegedly created by the certified operation. However, test results of products that allegedly came from that operation may be shared to clarify the purpose of the investigation.

During an investigation, certifiers should try to corroborate third party results with their own testing; however, sometimes product is no longer available to be tested. Third party test results that are not corroborated through investigation should be sent to the supplier's certifier if the following criteria are met:

1. The most likely source of contamination was the supplier or grower, not the certified operation.
2. The investigating certifier has verification that the product was represented as Organic.
3. The investigating certifier has a clear chain of custody from the certified operation linking the tested product to the supplier.
4. The investigating certifier has a sampling report.

If these criteria are met:

- Notify supplier's certifier once it is determined that the certified operation is not the source of contamination, or sooner if the investigation is time sensitive.
- Send all evidence to the certifier with a summary of the investigation.
    - When making a request for information, consider what you would want to receive if another certifier sent the complaint to you.
    - For evidence submitted by the complainant that should remain confidential (generally anything not shared with the operation), add "Confidential" to the file name.
- If results were part of a NOP/SOP complaint, let NOP/SOP know in the complaint report that the certifier has been notified and NOP/SOP should follow-up.

Notifying other certifiers of suspected contamination

When an investigation leads to the conclusion that another operation is the likely source of contamination, notify the certifier of the operation and consider notifying the NOP. Provide the certifier with all evidence and a summary of the investigation so they can investigate further (see email template below). See the ACA Certifier Contact list for specific departments or look on the certifier's website for contact information.

Suggested language for notifying another certifier of suspected contamination:

Notification of a residue test that traces to another certifier:

<Name of Certifier> sampled product from the <Name of Certifier> certified operation listed below and found positive results. The audit trail for sampled product traced it back to an operation you certify – NAME. Please see the attached test results, audit trail, and organic certificate.

- *<Name of Certifier> Client Name:*
- *Date Collected:*
- *Product and lot # Sampled:*
- *Location of Sample:*
- *Sample Code:*
- *Results:*

We've completed our investigation and found that it is not likely that our client is the source of contamination. [Evidence for why contamination likely did not take place at our client's operation, i.e. product arrives and remains in sealed packaging, operation is all organic, etc.] We wanted to notify you of our findings so that you may investigate if appropriate.

Attached evidence with "Confidential" in the file name was received from a third party. These documents should be treated as confidential and not shared with your operation. We are sharing them with you under the NOP "cone of confidentiality" as we believe it will assist your investigation.

Audit Cross Checks

Audit cross checks are another essential tool for investigation of potential fraud. In 2018, an ACA Working Group on Verifying Traceability in the Supply Chain concluded that the Transaction Certificate (TC) system, long thought to be an essential element in verification of organic sales, does not realistically verify organic integrity. The working group made this conclusion based on the idea that full verification of each sale is not the standard approach of certifiers and is not realistically attainable, unless TCs are made mandatory for all sales, and without significant reallocation of resources to this end. It was concluded that verification of organic integrity, then, is more a function of the audit, and this points to a need for consistent and thorough audit scrutiny, including audit cross checks. Basic Best Practices related to audit cross checks, as outlined in the ACA Best Practices for Verifying Traceability in the Supply Chain below.

- Certifiers should cooperate with cross-agency requests for information related to audit cross-checks, especially in cases of active investigations. However, certifiers may choose to prioritize cross checks that can be conducted internally (for example, the certifier handles the certification for Sample Organic Farmer who sells organic corn to Sample Organic Buyer, who is certified by the same agency).
- ACA's should conduct cross checks based on risk. Frequency of cross checks may vary from one certifier to the next, depending on risk assessment, goals, and resources. All ACAs should plan on doing cross checks and should have systems in place to enable that.
- Organic System Plans and/or Inspection Reports can request a list of main buyers so that meaningful cross checking can be planned and communicated to inspectors and reviewers in advance. Or certifiers can start with known buyers and determine which suppliers to crosscheck at next inspection as suppliers should already be part of OSP.
- ACAs should have designated staff who plan, coordinate, and monitor cross check activity.
- Instructions for inspectors must be clear and direct and may include directions to ascertain total sales of a given crop/product to or from a specific entity during a given period of time, or a trace-back exercise for a specific load or shipment linked to a specific entity. As an example, a supplier may be asked to confirm quantities, dates, and

mode of transport for individual shipments as indicated on a specific bill of lading provided by the certified entity that received the shipment.

- The inspector should not disclose to the client the intention to conduct a cross check of the information supplied – not verbally nor in the Inspection Report. Cross check exercises could be conducted as a part of an ACA's overall surveillance or unannounced inspection plan. They also may be conducted as desk audits; inspector presence is not essential.

In addition to these traceability best practices, the 2019 Working Group on Cross Agency Investigations concluded that audit cross checks or other investigations performed at high risk and/or high-profile operations should consider a multiple-inspector approach for the assurance of process integrity. The working group further concluded that audit cross checks should focus on areas of suspected fraud or elevated risk, as opposed to being implemented as a part of a routine or random approach. Specifically, handlers of large volumes of single-ingredient product, such as organic grain, were seen to present an area of elevated risk. Additional ACA work on Risk Assessment is outlined in the 2019 ACA Best Practices for Risk Assessment document.

Suggested language for requesting audit cross check cooperation from another certifier:

We are conducting a cross check audit of <Name of Certifier> certified operation NAME and need your assistance. This operation sells organic PRODUCT to an operation you certify, NAME. We are investigating potential fraud.

Attached evidence with "Confidential" in the file name was received from a third party. These documents should be treated as confidential and not shared with your operation. We are sharing them with you under the NOP "cone of confidentiality."

We would like to compare records from our operation to records from your operation to look for discrepancies. Please provide records for organic and nonorganic PRODUCT purchased from <Name of Certifier> certified operation NAME, including copies of all delivery and invoicing records for organic and nonorganic product received from this operation from DATE to present. We have also requested this information directly from your operation.

All information you provide to us will be kept confidential, except records allegedly created by our operation. In case of discrepancy, we may share records allegedly created by our operation to request explanation. Let us know when we can expect to hear from you. If we discover any discrepancies, we will contact you to coordinate further investigation. Please feel free to reach out with any questions.

Suggestion language for requesting audit cross check info from an operation not certified by the certifier performing the investigation:

I work for <Name of Certifier>, a USDA accredited organic certifier based <location>.

We would like to review your records for organic and nonorganic PRODUCT purchased from <Name of Certifier> certified operation NAME. Please provide copies of all delivery and invoicing records for organic and nonorganic product received from this operation from DATE to present.

All information you provide to us will be kept confidential, except records allegedly created by operations we certify. In case of discrepancy, we may share records allegedly created by operations we certify to request explanation. We would appreciate a response by <DateUsuallyOneWeek.>

Conclusion:

The ACA recommends all accredited certifiers adopt ACA Best Practices and guidance for consistent implementation of the USDA Organic Regulations. ACA Best Practices and guidance Documents are reviewed periodically to ensure they are accurate and up to date. Concerns with this or any ACA Best Practice or guidance document should be submitted to the ACA Coordinator.

Resources:

ACA Certifier Contact List- Department Specific