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The National Organic Standards Board  
c/o Valerie Frances, Executive Director, NOSB  
1400 Independence Avenue, SW  
Room 4008 – South Building, Ag Stop 0268  
Washington D.C. 20250-0200

RE: Docket Number AMS-TM-09-0060

- Clarification of Marketing for Voluntary Retail Certification

### **Guidelines for Retailer Certification**

We appreciate the efforts of the committee and we agree that guidance would help the consistency of retail marketing and retail certification. More than providing specific guidance to retail stores however, we feel explanation of existing regulations and how they apply to **any type** of NOP certified handling operation (i.e. restaurants), would gain more ground because it would be applicable to all types of retail operations choosing to become certified. All certified handlers, including retail stores, are certified for their handling practices and their ability to comply with the regulation with respect to process, product, labeling, and marketing. **While consumers may associate the USDA seal with a product, behind every product is a facility, and it's the certification of the facility that allows for the USDA seal to be used on the product.** A quick visit to a handful of certified operator websites will reveal the USDA seal associated with a company name vs. a product.

The regulation does not give specific guidance to **any** type of operation, whether it's a flourmill, a brewery, a soymilk manufacturer, a grocery store, or a restaurant. Composition and labeling requirements are provided in detail, but the general requirements such as commingling and contamination prevention, record keeping, and pest management are not explicit and guidance is not offered. Accordingly, they are adapted to each kind of operation differently and the "how to" becomes a process of investigation, education, common sense, and corrective action. **In all cases, the certified operator must maintain the organic integrity of the ingredients and products they are handling, and comply with composition and labeling requirements, which includes all labeling materials used to market the company. How a retailer ultimately markets their certification is really no different than the how a food processor would market the certification of their facility. The central theme is good handling practices, protecting the organic integrity of the product, and 3<sup>rd</sup> party verification of the organic claims being made.**

With this comment opportunity, our goal is to answer the questions provided in the guidance document using the above concepts as the central theme.

We also want to acknowledge that a great deal of time and effort is being suggested for the education of operators that voluntarily become certified. Oregon Tilth fully supports voluntary certification of exempt and excluded operations, but our real concern is for the operations that are NOT certified. Retail operations that choose to become certified take the

time to educate themselves on the requirements of being certified and generally learn and comply as a function of the certification process. **Exempt and excluded retail operations handling organic products and making organic claims, should be doing so in accordance with the Act and NOP regulations. The operations that need the most guidance, trainings, and enforcement are the ones that are NOT certified.**

### **NOP's ROLE**

Oregon Tilth supports the NOP's role in promoting the marketing of the USDA seal for certified retailers AND their role in promoting the education of noncertified retailers. We ask that such promotion apply to the full range of retailers, rather than solely the typical natural food store described in the CACC guidance document. With respect to the departments to be included in a natural food store, we ask that any guidance given include the nonfoods and personal care departments as well. General marketing guidelines should primarily assist retailers in educating the public on the meaning behind the certification of their operation, and the meaning behind the labeling claims on the products they sell. Such guidelines should remain general and focus on the requirements of good handling practices and accurate organic labeling throughout the establishment.

For marketing purposes, the retailer should specifically state what part of their operation is certified. Perhaps the most important marketing information to be provided is that retail certification does not necessarily imply that every product in the establishment is certified. The retailer is being certified for the handling of organic products, and the organic claims made on products and ingredients. The use and placement of the term "organic" will dictate which sections of the regulations are applicable, and the way in which they can market the certification of their establishment. Retailers often receive their education primarily through the certification process and therefore certifiers should also be primary recipients of education and training.

With respect to organic marketing procedures in given departments, we offer the following:

#### **Deli/Bakery**

***Because these departments are handling and processing according to § 205.270, the CACC is asking if they should be certified?***

A deli or bakery is excluded from certification only as long as they are processing on the premises raw and ready-to-eat food from agricultural products that were previously labeled as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))". They cannot however represent their products or the ingredients in their products as ***certified*** organic.

The guidance document states:

According to § 205.101 (b) a handling operation that is a retail food establishment or portion of a retail food establishment that handles organically produced agricultural products but does not process them is exempt from the requirements, but these departments are indeed handling and processing.

This statement is inaccurate because it attaches the language from § 205.101(a), which applies to an exempt retailer that is not processing product, to § 205.101(b), which excludes portions of a retail operation from certification if they are processing raw and ready-to-eat food on the premises.

***Should delis or bakeries that process and handle in a retail establishment be allowed to make organic claims on the label if they are not a certified organic retail department?***

Yes, according to the regulations they may. The key is for the operation to recognize they are excluded from certification only and not from compliance with the regulations, and then label their products accordingly, or not at all. As per the Preamble:

No retailer, regardless of this exclusion and the exceptions found in the definitions for "handler" or "handling operation," may sell, label, or provide market information on a product unless such product has been produced and handled in accordance with the Act and these regulations. Any retailer, who knowingly sells or labels a product as organic, except in accordance with the Act and these regulations, will be subject to a civil penalty of not more than \$10,000 per violation under this program.

***What is the advantage for a retail deli or bakery to become certified if labeling claims are not much different than a non-certified retailer?***

Most exempt and excluded retailers are not fully educated on aspects of the regulation they are required to meet. If a retailer were to fully understand and adhere to the commingling and contamination prevention requirements, the labeling provisions of § 205.305 and § 205.310, and the record keeping provisions of § 205.101(c), certification would be a stone's throw away. The advantage to being certified is the ability to proclaim 3<sup>rd</sup> party verification of the practices that are already required by the Act and regulations. If enforcement of exempt and excluded operations were in place, retailers would be much more inclined to seek out certification because of the educational assistance it offers and the marketing advantages it would provide.

***Should certified organic delis/bakeries market prepared organic foods according to the NOP organic labeling requirements?***

Absolutely – it's required by the regulations! Certified retailers should comply with all labeling, composition, and record keeping requirements, just like any other certified handler. The claim made on a product should be fully supported by formulations and supporting ingredient documentation, AND the OHP should be updated and approved when changes are made. **Our experience with both excluded and certified delis often finds products labeled according to § 205.301(d). In other words, the products themselves are not labeled as organic. Instead, the organic claims are limited to the ingredient statement.** This approach dismisses the need to submit product formulations, calculate organic percentages, and maintain non-organic ingredient documentation, which is generally not practical for deli, bakery or restaurant operations where recipes and suppliers can change daily. The certifier then verifies the handling and compliance of the individual organic ingredients only.

***What is the proper use of the accredited certifying agent name in deli signage collateral? Should the certifying agent name be included on all signs in the deli case and on grab and go products marketed as organic or made with organic? 205.303(b)(2) and 304(b)(2) require that the certifier be identified.***

No, the certifier name should only be used where applicable or required as supported by the regulation. The certifier statement, as per § 205.303 and § 205.304 should only be used on materials for products that are certified as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))". The certifier statement is only **required on retail packaging**, therefore it would be required on grab and go products making an organic claim in the product name.

***Should all deli products manufactured on site at a certified organic retail deli and sold in the prepared foods case or the grab and go case have ingredient decks reviewed by the certifier prior to labeling?***

The label (and formulation and supporting ingredient documentation) for prepared retail deli products sold as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" should be submitted to the certifier for approval prior to the product being sold. This information is required by the regulations as part of the OSP. Each additional label of the same kind does not need to be submitted prior to labeling (i.e. scale labels generated for grab and go case products). If the operator is choosing to only list the organic ingredients in the ingredient statement, several examples can be submitted as part of the plan. Complete review of labels should take place during the annual inspection.

**Bulk Foods**

The guidance provided in this section is too specific. The procedures described are just a few of many that could fall

under the commingling and contamination prevention requirements. It's better to provide guidance on the general goal behind § 205.272, and allow retailers to identify where the organic critical control points are in their own operations. Each certified handler or retailer must use a systematic and practical approach in assessing all activities in order to identify the places where contamination, commingling or misrepresentation of a product might occur. **Better guidance would be on the development of procedures and monitoring systems that could be adapted to an array of operations and situations.**

## **Grocery**

***How does a grocery department that has all prepackaged organic products market the advantage of retailer certification when comingling is limited?***

A grocery department can develop a label-monitoring program as part of their OSP whereby they systematically review, record and act upon any product labels and labeling brought into their store that are noncompliant. This would include maintaining supplier organic certificates. A standard procedure can be developed for notifying the supplier, a certifier, or the NOP in order to bring the label into compliance. The certifier, on an annual basis during inspection, would review the program, which would include a label audit as part of the inspection. The retailer is then able to assure the consumer that the products they are offering are accurately represented, as verified by their 3<sup>rd</sup> party certifier.

***Should a grocery in aisle department that has all prepackaged product qualify for retailer certification?***

Yes, see above. There are significant advantages to retailers implementing a label monitoring program. A label monitoring system should be central to the compliance of the entire store or operation, and can be extremely effective in the grocery department.

***Should grocery bags, billboards, in store signs and other marketing collateral have the USDA organic seal as the main marketing message? This is confusing for the consumer if there is not additional marketing information regarding the meaning of having the USDA organic seal on the marketing collateral, which should include the name of the certifier, as required under 205.303 and 304. Marketing collateral that insinuates that the entire store is certified should not be allowed if only one, not all, departments are certified.***

The USDA Organic Seal should be allowed on billboards and grocery bags, but retailers should also have educational pamphlets, signs, etc. that explains the certification of their establishment. **The certifier statement is only required on retail packages as supported by the regulations, therefore it is incorrect to state that it's required on marketing collateral as per § 205.303 and 304.** Marketing information should clearly specify whole store certification or department store certification.

## **Dairy/Frozen**

***Many deli departments merchandise their pre-cut and wrapped cheeses in the dairy department. Sometimes the cheeses come with the manufacturers' stickers that have their logo and organic labeling information. These labels are being applied to chesses cut and wrapped in the store.***

***Can precut cheeses be labeled as organic if they are being cut and processed in a department that is not certified?***

We are aware of the common practice of applying the manufacturer's sticker to cheeses cut and wrapped in the store. We appreciate this question and agree that clarification is needed.

As per § 205.310 (b) the certified organic cheese can be handled on an exempt or excluded operation and may be identified as an organic product. The product **must not** however be represented as a **certified organic** product or display the USDA seal or any certifying agent's seal or any other identifying mark which represents the exempt or excluded operation as a certified organic operation.

## ACA's Role

*The CACC recommends certification agencies work with industry experts (i.e. OTA, IOIA, NOP) to develop mandatory training and education courses for retailers planning to become certified organic.*

Oregon Tilth supports the development of educational courses for retailers and supports the collaboration between certifiers and industry experts. We do not however support mandatory training and education courses for retailers intending to become certified. This type of requirement would need to apply to all certified handlers. As stated earlier we feel that training is more important for retailers handling organic products that choose NOT to be certified. In all cases however, whether certified or exempt, training and education courses should be available but not mandatory. Required trainings may be dictated by an operations inability to comply, but that should be part of an operation's employee training program and/or corrective action plan to noncompliance.

*If a retailer opts for certification, should certifiers inspect all departments (including departments outside of the one being inspected for certification) for compliance of marketing the USDA organic seal and/or all organic labeling? This would help check products that are produced in a certified department and cross- merchandised in a separate department.*

It's *always* necessary for inspectors to look at the entire establishment. This will automatically become a function of reviewing the pest management program, but above and beyond that, departments outside of the ones being certified are still responsible for following the regulations, and their activities may very well impact or have cross-over with the departments that are certified. During evaluation of contamination and commingling prevention, an inspector will need to evaluate the entire store. **Our experience is that retail operations opting to become certified are ultimately interested in whole store or whole establishment certification, and therefore welcome the review and feedback on the regulatory requirements for all departments.**

*Should certifiers require retailers to include marketing plans/programs as part of their OSP?*

Retailers should include, as part of the OSP and OSP Updates, labels and labeling materials for review and approval. Any material that will display the certifier logo, USDA seal or the term organic should be submitted as part of the plan, or at least a description of that material (i.e. department banner with certification information) should be included and reviewed during annual inspections. The certifier should have a clear picture of how the retail operation markets their business as well as their products. The marketing program should be described in the OSP and supported by submission of labels and labeling material.

## Retailer's Role

*Should retailers attend at least one mandatory NOP, OTA, IOIA, ACA, NASOP, or other accredited agency training workshop on Voluntary Retail Certification?*

As stated earlier, training should not be mandatory for certified retailers. We promote efforts toward making quality trainings available for all operations with an emphasis on the ones that are NOT certified. Certified retailers should seek out, as needed, the guidance and direction made available from the NOP, certifiers, consults, and organic trade and consumer associations.

*Certified organic retailers generally do their own internal audits in between inspections. Should the internal audits include marketing of anything using the USDA organic seal or the word "organic" for certifiers to then review at inspection time?*

Yes. Certified retailers and noncertified retailers should have label-monitoring systems in place for all departments. Additionally, the label-monitoring program should be a central part of the store's quality control program. Emphasis should be placed on use of the term 'organic' on product labels, whether they are generated in-store, transferred from one product to the next, or placed on the shelf as a function of stocking a prepackaged product.

In conclusion, as a certifier of several retail operations, Oregon Tilth offers our experience, and our assistance in the development of a guidance document and additional training materials as needed. We ask that CACC committee carefully consider the comments received and keep the following in mind during the development of final guidance:

- Guidance for Voluntary Retail Certification should apply to all types of retail operations (i.e. stores, restaurants, on-line retailers, catering businesses, street vendors);
- Guidelines should remain general and focus on the requirements of good handling practices and representation of the organic labeling claims being made throughout the establishment. Emphasis should be placed on internal label-monitoring programs.
- A certified retailer must maintain the organic integrity of the ingredients and products they are handling, and comply with composition and labeling requirements of the regulation, which includes all labeling materials used to market the company.
- Marketing materials for a retail establishment should focus on the handling of organic ingredients and products. The use and placement of the term “organic” will dictate which sections of the regulations apply to the operation, and the way in which they can market the certification of their establishment.
- General marketing guidelines should primarily assist retailers in educating the public on the meaning behind the certification of their operation, and the meaning behind the labeling claims on the products they sell.
- Exempt and excluded retail operations handling organic products and making organic claims, should be doing so in accordance with Act and regulations. The operations that need the most guidance, trainings, and enforcement are the ones that are NOT certified.

We also urge the NOSB to develop a procedure for the approval and posting of guidance documents to ensure a conclusive home for your work. It would be very beneficial to the industry if the NOP website contained a home for officially approved NOSB Guidance Documents. We are concerned about the status of several other guidance documents that have not to date been addressed by the program. Accordingly, we question the fate of the proposed retailer guidance and the worth of everyone’s time. We urge the CACC to follow up on the status of recommended guidance documents and for NOP to address the work of the NOSB. We specifically request that the following NOSB accepted recommendations be approved by the NOP and prominently posted on the NOP website:

- November of 2007 - Commercial Availability Guidance Document
- October 2006 – Listing of Certifying Agent’s Name on Packaged Products
- November 2006 - Use of Compost, Vermicompost, Processed Manure and Compost Tea.

Oregon Tilth encourages the NOSB and NOP to complete their process and looks forward to further clarification to ensure the uniform implementation of this standard.

Once again, Oregon Tilth would like to thank the NOSB for their ongoing work and commitment to the organic industry. We offer our support.

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Oregon Tilth, Inc.

Oregon Tilth is a nonprofit research and education membership organization dedicated to biologically sound and socially equitable agriculture. Oregon Tilth offers educational events throughout the state of Oregon, and provides organic certification services to organic growers, processors, and handlers internationally. An NOP accredited certifier since 2002, Oregon Tilth currently certifies over 650 farms and ranches and over 600 handlers in more than 35 states affording us a broad perspective of current practices and challenges faced by organic producers and handlers. This perspective also extends to the anticipated successes and challenges that this discussion topic will affect upon them.