

**National Organic Standards Board (NOSB)
Compliance, Accreditation & Certification Committee**

**Clarification of Voluntary Retail Certification
Discussion Document**

March 15, 2009

I. Overview

The purpose of this discussion document is to explore voluntary retail certification and determine where we need improvements so that we have strong consistent guidance, and regulation that support retail certification.

On October 20, 2002 the NOSB submitted to the Secretary its recommendation “*Criteria for Certification of Grower Groups*”. The recommendation was created to support farmer grower groups. The NOP approved the 2002 recommendation in May of 2007 for interim use by certifying agents.

In May of 2008 the CACC proposed a recommendation for further defining the 2002 Multi-site recommendation. This recommendation proposed that a strong Internal Control System (ICS) could serve as the hub for maintaining compliance procedures for multiple production units, sites and facilities operating under a single organic system plan. The recommendation expanded this construct beyond farmer grower groups to include retailers. The recommendation explained how a strong well managed and executed ICS could result in a reduction of direct observation of inspections of each unit or site, however, because of the fundamentally strong differences between farmer grower groups and retail establishments, retailers were removed from this recommendation.

On November 2008 the NOSB proposed an updated multi-site recommendation which removed retailers (with the intention of addressing it as a separate recommendation) and created a recommendation specific to farmer grower groups only.

In reviewing retailers as a separate recommendation for multi-site certification, a fundamental issue has surfaced: retail certification has no clear guidance within the rule that is specific for retailers. Therefore, we must look at multi-site certification for retailers within the context of broader guidance for the organic certification of retailers.

The following discussion document proposes that the NOSB and NOP address the development of defining comprehensive criteria, inspection risk factors and marketing protocol for inspectors that are specific to voluntary retail certification.

II. Background and History

In the year 2000, Congress opted not to require certification for retailers “...*There is clearly a great deal of public concern regarding the handling of organic products by retail food establishments. We have not required certification of retail food establishments at this time because of a lack of consensus as to whether retail food establishments should be certified,...*” December 21, 2000 FR (page 80552-80553)

Furthermore, although there was ambiguity regarding retail certification, there was an intent to explore and define it. (There is) “...a lack of consensus on retailer certification standards, and a concern about the capacity of existing certifying agents to certify the sheer volume of such businesses. Retail food establishments, not exempt under the Act, could at some future date be subject to regulation under the NOP. Any such regulation would be preceded by rulemaking with an opportunity for public comment.” December 21, 2000 FR (page 80552-80553)

Currently, **exempt** retailers are being certified as handlers under a voluntary retail certification option even though specific “regulations” for retailers have not been developed. Inspection agencies have played an important role in helping to guide process and procedure for retail certification simply by the necessary compliance procedures that are implemented and enforced.

Defining ‘exempt retailers’-

“Exempt and Excluded Operations

This regulation establishes several categories of exempt or excluded operations. An exempt or excluded operation does not need to be certified. However, operations that qualify as exempt or excluded operation can voluntarily choose to be certified. A production or handling operation that is exempt or excluded from obtaining certification still must meet other regulation requirements contained in this rule as explained below.

Excluded Operations

*(1) A handling operation or portion of a handling operation that sells organic agricultural products labeled as “100 percent organic,” “organic,” or “made with * * *” that are packaged or otherwise enclosed in a container prior to being received or acquired by the operation, remain in the same package or container, and are not otherwise processed while in the control of the handling operation is excluded from the requirements in these regulations, except for the provisions for prevention of commingling and contact of organic products with prohibited substances in section 205.272. The requirements for the prevention of commingling and contact with prohibited substances protect the integrity of organically produced products. This exclusion will avoid creating an unnecessary barrier for handlers who distribute nonorganic products and who want to offer a selection of organic products.*

*(2) A retail food establishment or portion of a retail food establishment that processes on the premises of the retail food establishment raw and ready-to-eat food from certified agricultural products labeled as “100 percent organic,” “organic,” or “made with * * *” is excluded from the requirements in these regulations, except for the provisions for prevention of contact of organic products with prohibited substances as provided in section 205.272 and the labeling regulations in section 205.310. The prevention of commingling and contact with prohibited substances and labeling requirements protect the integrity of organically produced products. Excluded retail food establishments include restaurants; delicatessens; bakeries; grocery stores; or any retail outlet with an in-store restaurant, delicatessen, bakery, salad bar, or other eat-in or carry-out service of processed or prepared raw and ready-to-eat food.”*

December 21, 2000 FR (page 80552-80553)

Exempt retailers are subject to penalties and fines if found to be out of compliance.

“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.

December 21, 2000 FR (page 80552-80553)

Accordingly, retailers are expressly excluded from the Rule definitions of “handler” and “handling operations” and, therefore, are not required to undergo the certification process. To understand the **exemptions** that Congress enacted, it is helpful to look at the relevant definitions.

The term “handle” is defined as “To sell, process or package agricultural products, ...” A “handler” is “any person engaged in the business of handling agricultural products, ... except such term shall not include final retailers of agricultural products that do not process agricultural products.” A “handling operation” is defined as “Any person or portion of an operation (except final retailers of agricultural products that do not process agricultural products) that receives or otherwise acquires agricultural products and processes, packages, or stores such products.” CFR Subpart A § 205.2

Thus, by subtracting the references to processing from the definitions for handler and handling operations, it is clear that final retailers who only “sell...or package agricultural products” are not considered handlers, and retailers who simply “receive or otherwise acquire agricultural products and...package or store such products” are not properly considered handling operations. As such, final retailers who engage in these activities are not subject to certification requirement, BUT may choose to seek organic retail certification of their operation or a portion of their operation.

There is still confusion in the industry around voluntary retail certification. Just last year on April 4, 2008 on the NOP web site Q and A section a public commenter asked:

1. *“May a retail operation be certified?
Under the NOP regulations, retail operations are generally considered an excluded entity and, therefore, do not have to be certified. However, a retailer may voluntarily become certified for the products for which it handles in accordance with the NOP regulations. And if a retailer has an instore bakery or delicatessen which processes products that are sold as organic, that portion of the retail operation must be certified as a handling operation in order to sell, label, or represent those products as organic.”*
2. *May a retail chain be certified using the percentage sampling system described under the community grower groups NOSB recommendation?
No. The grower group guidance does not apply to retailers.”*

History of “Group Certification” or Multi-site Certification” of Retailers 2002-2008

Although the NOP reinforces that exempt retailers can be voluntarily certified under the program, they also clarified that the “...grower group guidance does not apply to retailers”.

However, since 2002 voluntary retail certification has been applied using the multi-site construct for retailers with multiple sites. Retailers have voluntarily sought and achieved legitimate organic certification through the development and implementation of an ICS that is managed from a central head quarters and executed at 100% of the sites. The certifiers that supported and inspected these retailers operating under this construct were accredited by the NOP to perform such inspection and issue these organic certificates to the retailers.

In the fall of 2008 voluntarily certified organic retailers with multiple units using the multi-site construct were notified by their certifier that they were out of compliance and 100% inspection must be implemented immediately. Retailers were completely caught off guard by this mandate and sought

support from the NOP by requesting an extension with their certifier so that they could have ample time to budget for this considerable change in certification fees. An extension was granted for retailers giving them until June 30th 2009 to comply with 100% inspection. Although this extension has helped retailers plan and budget for this change, the current down economic conditions at retail have forced retailers to reevaluate the investment of certification now that it is three to four times the cost that they were accustomed to.

Due to the threat of noncompliance combined with the short time line for compliance and budget planning several retailers have chosen to opt out of retail certification. These retailers have invested heavily in an oversight model that includes internal surveillance, review, and training. Retailers who would opt out of voluntary retail certification may end up eliminating their current ICS and quality control systems that were put in place for maintaining organic certification. This could make organic products at retail at risk for less strict handling practices, and could reduce the organic messaging that many consumers are just starting to understand.

Another issue facing voluntary retail certification is a perception among some that retailers operating under a multi-site inspection process may be less stringently certified than retailers who are certified with annual inspection at every store. While there is currently no evidence to support these fears, the perception should be noted nevertheless. Comparing compliance success of retail operations certified under 100% certification, group certification, or no certification could help sort out the path forward.

A critical step to improve and strengthen voluntary retail certification is to provide clear guidance so the retailers know exactly what organic system plan; inspection and auditing protocol is expected. The CACC believes that the current practice of multi-site certification strikes a healthy balance for retailers choosing certification between the number of sites inspected and the cultivation of healthy responsibility for self-monitoring of retail stores through the ICS model. The objective of this recommendation is to create dialogue and cultivate support for the need for guidance of voluntary retail certification so that retailers will opt in, and not out, of retail certification.

III. Discussion

A. Voluntary Retail Certification, why do it?

Retailers that have committed to organic retail certification have done so mostly for two reasons:

- (i.) To instill organic handling practices for employees to make sure good organic handling is followed, similar to a HACCP (Hazard Analysis and Critical Control Points) program. Quality assurance program like HACCP are used in the food industry to identify potential food safety hazards, so that key actions, known as Critical Control Points (CCP's) can be taken to reduce or eliminate the risk of the hazards being realized. If done right, implementing organic retail certification does the same.
- (ii.) To be able to use the USDA organic seal to market organic certification as a testimonial that the store is following organic procedures that ensure products maintain their organic status. This supports an additional point of communication and confidence for the consumers understanding of the USDA organic seal.

B. How can we help voluntary retail certification?

Voluntary retail certification can be confusing. It's a complex process to create and market organic certification in a store. Many retailers with as few as 1 store or as many as a 1000 have created and demonstrated that an ICS can and does work, but not all retailers are consistent in understanding how to implement and market organic retail certification. Creating consistent guidance and regulation is the first step in supporting the continuation of USDA voluntary retail certification.

Most retailers have multiple operating systems that are different in every department. Organic certification in a grocery department is a puzzling thing to explain to a consumer when most products are boxed and safe from comingling. However, the benefits of proper handling of organic products in a bulk foods or produce department where open products can be contaminated if not supported by good organic handling practices are easier to market to the consumer.

Additionally, several areas of development should be considered as we explore voluntary retail certification such as:

- Regulatory rule change. Will there be any? If so what are they?
- The development of marketing guidance at retail for USDA organic retail certification.
- The function and guidelines of an ICS for voluntary retail certification.
- Inspection risk factors for determining enforcement of ICS such as but not limited to:
 - Geographic limitations
 - Number of sites and departments to be inspected.
 - Monitoring and self audit expectations.
 - Multiple brands under one ownership.
 - Purchasing-direct vs. corporate vs. distributor.
 - Non-certified department pest and cleaning control.
 - Storage and back stock limitations.
 - Display and merchandising in certified department vs. entire store.
 - Marketing and communications of organic certification.
 - Training and education expectations.
- Inspection training requirements from the NOP to ACA's.
- The role of distributors and suppliers for retailers that are certified organic.
- Clear guidance to the various retail departments and the specific criteria, inspection risk factors and appropriate marketing within those departments.
- The possibility of criteria for defining the clustering of retail units as a single production unit.
- The collaboration between members of the NOSB CACC, a task force of retailers and the OTA to recreate and update voluntary operating guidelines currently called the "Good Organic Retail Practices (GORP)" manual. The GORP manual was developed in 2001, is used by retailers to assist in understanding and implementing voluntary retail certification and is outdated.

The benefit of this development will be stronger and more consistent guidelines for voluntary retailer certification, which in the end will help to sustain and recruit more participation in the program, and will support marketing the end message of USDA organics to the consumer.

Committee Vote as a Discussion Document:

Motion: Bea James, Second: Jennifer Hall

Vote: Yes – 6 No – 0 Absent – 0 Abstain – 0

