



Accredited Certifiers Association, Inc.

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October 30, 2007

Ms. Andrea Caroe, Chair
National Organic Standards Board
United States Department of Agriculture
Room 4008 - South Building
1400 Independence Ave., SW
Washington, DC 20250-0001

Doc. No. AMS-TM-07-0118; TM-07-09
Notice of Meeting of National Organic Standards Board

RE: NOSB Certification, Accreditation, Compliance Committee recommendation on
“Certifying Operations with Multiple Production Units, Sites and Facilities under the
National Organic Program”.

Dear Ms. Caroe:

The Accredited Certifiers Association (ACA) represents 34 NOP accredited certifying organizations operating in North America.

The ACA does not support the National Organic Standards Board Certification, Accreditation & Compliance (CAC) Committee recommendation for Certifying Operations with Multiple Production Units, Sites and Facilities. We believe that the current CAC recommendation does not address the fundamental issues critical to grower group certification under the National Organic Program while creating new unacceptable allowances for the certification of retailer and processor groups.

We request that the NOSB reject the current CAC recommendation and request that a new recommendation be developed that is limited to addressing the unique certification issues inherent to grower group certification.

The current CAC recommendation does not sufficiently address the issues and situations relevant to Grower Group Certification which NOP asked the NOSB to address. However, it does provide significant new allowances for the treatment of retailers, processors and other non-farm entities as groups. The majority of ACA members clearly do not support this. Therefore, we believe that implementation of this recommendation would be a detriment to the NOP as a whole.

We do support the revising of the 2002 NOSB Recommendation for Grower Group Certification to address the issues cited in the Appeal Summary, namely

*USDA-accredited certifying agents working together to ensure the integrity of
organic certification in the United States*

- a) The practice of inspection by the certifier of only a certain percentage of farms participating in grower groups conflicts with §205.403(a)(1) on site inspections, and
- b) The lack of criteria for the requirement of sufficient expertise in organic production or handling techniques on the part of the inspector, the requirement to disclose conflicts of interest, or the requirement for an annual performance review of the inspector.

Members opposing expansion of grower group certification to retailers, processors, etc., cited various reasons -

- They felt the spirit of this exemption was to allow growers who otherwise would not be able to afford the cost of certification access to the organic market.
- This is an inappropriate application of the [grower group] concept and represents a violation of the NOP, at best.
- Those currently certifying retailers with multiple locations also noted that even with an internal control system, the management of individual stores varied enough to warrant individual inspections.
- Historically, grower group certification was developed to address small farms not located in readily accessible areas, marketing the same products. Retailers, processors and handlers are by nature in accessible locales as well as far removed from the group social tradition and do not function in ways that remote cooperatives do, and as such are not in need of the same considerations.

One ACA member, in favor of expanding grower group certification to retailers, handlers, etc., reasoned that Federal laws cannot be segmented to isolated geographic locations or operations and still be considered to be a national regulation. It must be implemented equally for all regulated entities in order to be a fair and consistent law and to provide a “level playing ground” for all it regulates.

We are attaching a position paper which should be used by the NOSB and CAC to develop a new recommendation that addresses critical issues and criteria in grower group certification.

Respectfully submitted,

ACA Board of Directors

Leslie Zuck, Chair
Brett Bakker, Vice Chair
Donald Franczyk, Secretary/Treasurer
Kristy Korb
Jake Lewin
Marty Mesh
Bonnie Wideman



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To: National Organic Standards Board

Re: ACA Comments for suggested revisions to the 2002 NOSB Recommendation for Certification of Grower Groups

The members of the Accredited Certifiers Association, Inc. (ACA) support the general concept of Grower Group Certification, but realize that additional requirements are necessary in order to improve the integrity of organic products from these groups and maintain consumer confidence in the organic market. We feel that grower group certification is necessary for those farmers in some geographical or social regions who market their crops collectively. A large majority of ACA members do not support the expansion of the grower group certification concept to multi-site handlers, processors or retailers.

In the Appeal Summary pertaining to improper inspection procedures of the Mexican grower group, two issues of concern were identified:

- a) The practice of inspection by the certifier of only a certain percentage of farms participating in grower groups conflicts with §205.403(a)(1) on site inspections, and
- b) The lack of criteria for the requirement of sufficient expertise in organic production or handling techniques on the part of the inspector, the requirement to disclose conflicts of interest, or the requirement for an annual performance review of the inspector.

ACA members believe it is possible to address these concerns by revising the NOSB Recommendation for the Certification of Grower Groups, rather than by the elimination of certification of grower groups, which will adversely impact the many grower groups currently functioning worldwide. We are including our suggestions for revision of the NOSB Recommendation #1 Criteria for the Certification of Grower Groups. We believe that Recommendation # 2 pertaining to inspections procedures should be reviewed, perhaps revised, and become a Guidance Document. We have not provided comments on Recommendation # 2 at this time.

Our members believe that additional requirements should be included in the eligibility criteria for membership in a grower group. The current NOSB proposal is based on concepts supported internationally by IFOAM, which holds as a basic premise that Grower Group Certification should be limited to "smallholders". IFOAM has lengthy discussion of how to determine who is a small holder, (see *Smallholder Group Certification Compilation of results, Proceedings of three workshops: February 2001, February 2002, February 2003*) Without this type of restriction, the allowance of the Grower Group model will be exploited by large corporations and governments who wish to bypass the basic requirements of USDA organic certification and avoid independent third party inspection. Given the current challenges facing USDA to provide oversight of accredited agencies in foreign countries, we do not think a method that allows for reduced inspection protocol is warranted for all producers. We suggest participation in grower groups only be available to growers producing less than \$5,000 US in organic sales. This sales level is supported in OFPA as a threshold

for exemption from certification, so allowing a slightly different protocol for inspection might be legally supportable. Growers earning over \$5,000 US in sales should be able to afford certification.

ACA members also believe that while the goal should be inspection of 100% of the grower group members by the certification agent, current reality is that this is not always possible. This is due to a variety of factors, including time constraints due to extended travel requirements, a lack of inspectors in the country and in reality the high cost of obtaining inspectors from other areas for the length of time necessary to conduct all inspections. The majority of grower groups utilize internal inspectors to monitor compliance by the producers. The ACA feels that the inspection of “production units” rather than all individual farm members of a grower group would ensure the integrity of the organic products. While §205.403 utilizes the term “production unit”, and the Appeal Summary also references this term, there is no definition contained for *production unit* in the National Organic Program. Indeed, many grower groups internal control systems have already broken the growers down in a way that is easy for them to monitor and administer. In many cases this may be via watershed, local community, harvest collection site, or the local warehouse where inputs are directly distributed to growers. These various subgroups would become the “production units”. The units would be defined by the applicant in the organic management plan.

We recommend the following definition be included in the NOSB Recommendation for Grower Group Certification:

Production Unit – a distinct physical site, within a certified operation, at which organic production and/or handling is conducted. A production unit may be a single farm, or may be comprised of multiple locations grouped by geographical location, or contiguous farms utilizing the same management techniques. Each production unit must undergo an annual inspection.

The job of the accredited certifier is to determine if the management system of the grower group is functioning according to its policies and procedures. The structure of the management system is reviewed at the time of initial certification application and determined to meet (or not) the requirements for certification under the National Organic Program. Inspection by the certifier would include a review of the management operation, along with verification of the operation through inspection of the production units. The certifier should develop a risk assessment procedure to identify units where additional inspections are required. These could include units where parallel nonorganic production is occurring, or units adjacent to non-certified production, or unit where the grower is using prohibited materials on other noncertified crops.

Regarding the information in (b) above, lack of criteria, we have addressed these requirements in our revision of the NOSB Recommendation.

We thank you for the opportunity to provide comments on this Recommendation.

Suggested revisions to the 2002 NOSB Recommendation for Certification of Grower Groups

From the Accredited Certifiers Association, Inc.

Introduction

Grower group certification refers to the certification of a group of producers whose farms are uniform in most ways, and who are organized under one management and marketing system. Grower group certifications have historically been used for the certification of cooperatives or groups of producers located in a geographical or social region, whose crops are marketed collectively. Primary crops produced by grower groups include coffee, cocoa, tea, spices, and tropical fruits.

It should be noted that there are inherent risks associated with the certification of grower groups. An incident of contamination may lead not only to the exclusion of a producer's crop, but if that crop has been co-mingled with the balance of the group's production, this would lead to the exclusion of the entire group's crop, and possibly suspension of the group certification.

Background

In section 205.2, the final rule defines "person" as "an individual, partnership, corporation, association, cooperative, or other entity."

In section 205.400 "General requirements for certification," the final rule states:

"A person seeking to receive or maintain organic certification under the regulations in this part must:

- (a) Comply with the Act and applicable organic production and handling regulations of this part;
- (b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent as provided for in § 205.200;
- (c) Permit on-site inspections with complete access to the production or handling operation, including noncertified production and handling areas, structures, and offices by the certifying agent as provided for in § 205.403;
- (d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow authorized representatives of the Secretary, the applicable State organic program's governing State official, and the certifying agent access to such records during normal business hours for review and copying to determine compliance with the Act and the regulations in this part, as provided for in § 205.104;
- (e) Submit the applicable fees charged by the certifying agent; and
- (f) Immediately notify the certifying agent concerning any:
 - (1) Application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation; and
 - (2) Change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and the regulations in this part."

Given the fact that the rule includes "cooperative" and "association" in the definition of "person", and given the fact that section 205.400 indicates that it is a "person" who seeks organic certification, it can be concluded that grower groups, organized as cooperatives or associations, can seek certification as one operation under the NOP without a change to the rule.

Grower groups are different from other entities seeking certification in that they are comprised of numerous producers who are certified as one entity, rather than being certified as individual sole proprietors.

Grower groups may also organize into “production units”. *Production Unit* is defined as – a distinct physical site, within a certified operation, at which organic production and/or handling is conducted. A production unit may be a single farm, or may be comprised of multiple locations grouped by geographical location, or contiguous farms utilizing the same management techniques. Each production unit must undergo an annual inspection.

Historically, not all grower group members’ farms are individually inspected by the certifying agent annually. This means that the grower group must have a quality system, or internal control system, in place to assure that all members of the group operate according to the system plan in compliance with the organic standard. The quality system of the grower group is inspected at least annually, but only a set percentage of the member operations are visited by the certifying agent. Individual site inspections are conducted primarily to validate the functioning of the quality system.

Rationale

Many products sold as organic in the United States, including coffee, cocoa, tea, spices, and tropical fruits, are produced by grower groups. These types of operations are certified by certifying agents who have received NOP accreditation. While there is no need to change the final rule, there is a need to provide guidance to the NOP to assure that certifying agents who operate grower group certification programs follow consistent procedures. There is also a need to assure that such certifying agents are evaluated according to set criteria during the accreditation review of their programs.

Recommendation # 1

Criteria for the Certification of Grower Groups

The NOSB recommends that, in order to be certified as a grower group, the following conditions must be met:

1) Eligibility

- a) The crops and farming practices of the producers must be uniform and reflect a consistent process or methodology, using the same inputs and organic system plan.
- b) The group must be managed as a legal entity under one central administration that is uniform and consistent.
- c) Participation in the group is limited to producers who sell all of their organic production through the group.
- d) Participants in the group must provide information on their production practices.
- e) Grower groups must utilize centralized processing, distribution, and marketing facilities and systems.
- f) Individual farmer members of the grower group have gross organic returns of less than \$5,000 US.

2) Group Management

- a) Grower groups must establish and implement an internal control system (quality system), with supervision and documentation of management procedures/policies, and identification of each production unit. Grower groups must develop and maintain an Organic System Plan that members agree to follow and which provides information on production practices and inputs used at each production unit to insure compliance with the USDA's National Organic Standard.
- b) The Internal Control System must conduct an annual review of its program either conducted by the management of the group, an outside auditor, or consultant who has expertise to conduct such reviews and implement measures to correct any noncompliance in operating procedures.
- c) The grower group must maintain a complete and up to date list of grower group members including each members name, location, other contact information as applicable, product(s) produced, estimated yields, and date(s) of internal inspection.
- d) The group must control the purchase and distribution of all external inputs used by the growers. This includes, but is not limited to, seed, fertility and pest control products.
- e) Grower groups must ensure that all members are provided with a copy of the USDA National Organic Standards in the appropriate language. All group members must attest that they understand and will comply with the USDA's National Organic Standard as it applies to their specific operation, and with the internal control system policies, and must agree to permitting inspections.
- f) The Internal Control System must develop a sanction policy and procedure to address producer noncompliance or a loss of the organic integrity of a crop. A list of sanctioned producers must be maintained.
- g) All procedures that verify the ability of the internal control system to effectively monitor the individual members of the group and ensure compliance with the USDA's National Organic Standard and internal control system policies must be documented. Documented procedures and records used to verify compliance with

- written procedures must be maintained and made available at inspections by the USDA-accredited certification agent, by authorized representatives of the Secretary, and if applicable, by the State program's governing State official.
- h) Grower groups must not accept new members until they have been inspected by the internal control system and found to be compliant with the USDA's National Organic Standard and internal control system policies. Changes in group membership must be reported to the USDA-accredited certification agent as changes occur.
 - i) The internal control system must provide continuing education for all group members. Documentation of continuing education and training and members receiving such education and training must be maintained by the group.
 - j) Producers who are certified as part of a grower group do not possess individual certificates. Rather, the grower group is certified as a unit.

3) **Personnel**

- a) The internal control system must maintain a list of its employees, their job descriptions, evidence of their expertise, and organizational flow charts.
- b) Internal control system personnel must have sufficient expertise in organic production or handling techniques to fully comply with and implement the terms and conditions of the USDA's National Organic Standard.
- c) Internal control system management must use a sufficient number of adequately trained personnel, including inspectors, to fully comply with and implement the terms and conditions of the USDA's National Organic Standard.
- d) Management of the internal control system must conduct annual performance reviews of all personnel, including internal inspectors.
- e) Personnel of the internal control system must disclose any conflicts of interest, as defined in §205.501(a)(11).

4) **Inspection**

- a) The certifying agent shall have policies and procedures for determining how many growers must receive an annual inspection by the certifying agent. For each grower group it certifies, a certifying agent must document its method for determining the number of growers to be inspected. This determination must include consideration of:
 - The number of operations participating in the grower group;
 - The size of the average operation in the grower group;
 - The degree of uniformity between the group's operations;
 - The complexity of the group's production system(s); and
 - The management structure of the group's internal control system.
- b) All production units must be inspected annually, either by internal inspectors or by the accredited certifying agency.
- c) The inspector may not have a conflict of interest with the inspected party, as defined in §205.501(a)(11).
- d) The group must maintain copies of any internal control system annual inspection reports and make these available at inspections by the USDA-accredited certification agent, by authorized representatives of the Secretary, and if applicable, by the State program's governing state official.