



Accredited Certifiers Association, Inc.

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

October 1, 2013

Ms. Michelle Arsenault, Special Assistant
National Organic Standards Board
USDA-AMS-NOP
1400 Independence Ave. SW.,
Room 2648-So., Mail Stop 0268
Washington, DC 20250-0268;

Re: Docket AMS-NOP-13-0049; NOP-13-04
NOSB Compliance, Accreditation & Certification Subcommittee
Voluntary Retail Certification Requirement Clarification and Guidance Discussion Document

Dear Ms. Arsenault:

Thank you for the opportunity to provide comments to the National Organic Standards Board (NOSB) regarding the Compliance, Accreditation and Certification (CAC) Subcommittee Discussion Document entitled Voluntary Retail Certification Requirement Clarification and Guidance.

The Accredited Certifiers Association (ACA) represents 47 foreign and domestic accredited certifying agents. Our comments were developed through a Working Group of interested ACA members with input solicited from our entire membership.

The ACA appreciates the Subcommittee's work in bringing this discussion forward to the public for comment, however, ACA members request that the NOSB and the National Organic Program (NOP) provide sufficient time for public comment - the recent public comment period was only 17 business days. This is not sufficient time to prepare comments for the Board. We ask that NOP and NOSB review the process used, revise the work plan and work schedules in order that the work is completed earlier and provide sufficient time for the public to submit well-documented, thorough comments to the NOSB. If the revision of the schedule means that fewer discussion documents / recommendations are presented, so be it. We do not judge the Board on the number of items for consideration, but on the quality of information provided. The public has recently seen the time frame for public comment shrink to the point that it is difficult for membership organizations to a) provide the information to their members; b) organize their members to begin the work of developing comments and c) draft and submit the comments. We request that a concerted effort be made to extend the public comment period.

The ACA supports the CAC Subcommittee reaching out to gather additional information for clarification of issues surrounding Retail Certification. While our members find most retail food

establishment activities to be exempt or excluded from a certification mandate, they strongly support the concept of voluntary retail certification. Retail certification serves to strengthen the organic community by reducing organic integrity risks, providing higher-quality consumer education, and by certified retailers' functioning to "watchdog" organic compliance further up the supply chain. Operations that seek certification tend to be more knowledgeable about organic requirements and issues affecting the organic community. Their staff is able to provide excellent service to the discerning organic consumer. They serve a valuable niche. We're pleased with the increasing presence of organic products in the marketplace, whether or not retailers choose to seek certification for their exempt or excluded handling. Even small organic sections at more conventional retail operations serve a function of introducing new consumers to organic products. While the retailer certification exemption /exclusion permits retailers to refrain from certification, we prefer to stress the benefits of certification, so retailers choose certification as a point of differentiation in the marketplace and to provide better service to the organic community.

Issue 1 – Who does §205.101(a)(2) apply to? What is a retailer who "handles but does not process?"

Since the NOP definition for "handle" includes "process," and since "processing" includes a range of activities that transform products, but also includes enclosing food in a container, just about every retailer "processes" products. But, handling is more commonly understood as being limited to activities that do not change the form of a product, activities like stacking products for display, or repackaging products. For the purposes of determining whether or not a retailer needs to be certified, the difference between handler and processor does not matter much, since either way an exemption or exclusion will apply. However, clarity in differentiating handler and processor is needed, to determine what sections of the regulation apply, including whether or not recordkeeping is required for uncertified operations. With regard to requiring certification, we feel that key issues to address include the *location* of the processing activity (on-site or off-site), and how the products are *labeled* (do they use the USDA Seal and/or a "certified" claim).

Issue 2 – Who does the §205.101(b)(2) exclusion apply to?

This exclusion applies to most every retail food establishment that processes products, except for those that do not process on-site. We interpret that the "raw and ready to eat" language includes all fresh meat, bulk foods, prepared foods, etc. as long as the products' suppliers were certified organic. It is helpful to focus on the "retail food establishment" definition to determine who's excluded from a certification requirement. Retail food establishments include restaurants, delis, bakeries, grocery stores, and retail outlets with an in-store restaurant, deli, bakery, salad bar, or other eat-in or carry-out service. Establishments that do not process their products on-site must be certified. Generally, ACAs require handling certification for operations that distribute their products outside of the establishment. As such, operations that must be certified include processing facilities that have a retail shop, farms that sell product off-site or at the farm gate, and operations that sell products online. Certification is also required for operations that use the USDA Organic Seal or a "certified" claim.

Issue 3 – Under what conditions is a retailer exempt from certification?

Retail food establishments do not need to be certified if their handling/processing and sales occur on the premises of the establishment, and if they do not make certified organic claims or use the USDA Organic Seal. In the olive oil illustration in the discussion document, the product does not need to be certified for in-store sales. It is raw and ready to eat, and does not use certified claims or the USDA Seal. However, if the product makes organic claims for web-based sales, ACAS would consider that they are surpassing the intent of the retail exemption / exclusion, and should be certified as a processor.

Issue 4 – To what extent can a retailer process foods without certification?

As in #3 above, retail food establishments do not need to be certified if their handling / processing and sales occur on-site, and if they do not make certified organic claims or use the USDA Organic Seal. *Requiring* certification for use of a certified organic claim or for use of the USDA Organic Seal on processed products is supported by existing regulations (§§205.308, .309, and .310) and is an incentive for operations to choose voluntary certification.

Issue 5 – May non-certified exempt retailers make a “certified organic” claim for products processed in store?

A current common practice by uncertified retailers is to transfer certified organic products from a box or bag to a display case bulk bin and include the same information as was on the original container, including the USDA Organic Seal or the name of the supplier’s certifier.

Some ACAs believe that the language in Standards §205.308 – “prepared in a certified facility” – refers to the retail food establishment, rather than where the product was initially produced. If “prepared in a certified facility” does refer to the retail operation, and that operation is not certified, the use of the word “certified” would be restricted, and the retailer would not be permitted to use the USDA Seal. It is recognized that the requirement for the retail food establishment to be certified to use the word “certified” and the USDA Seal would have a major impact on existing retail operations, as this is commonly practiced by noncertified retailers. Clarification is requested regarding the interpretation of “prepared in a certified facility”.

Issue 6 - What are the guidelines for making a “Certified Organic Retailer” claim? Can a store that only has a single department certified claim to be a “certified organic retailer?”

Single departments can be certified. The “certified organic retailer” claim must only be made in conjunction with those departments that are certified, e.g., a sign hanging in the produce section of the store which is the department that is covered under certification. Marketing language can be further clarified. ACA’s currently try to ensure that such marketing claims are not misleading, but this is subjective.

Issue 7 – How can we help to foster consistency between “all” retail operations, certified or not?

Consistency through guidance for certifiers/retailers and for non-certified retailers is needed. We expect that guidance will bring more clarity to what needs to be certified and what does not. Educational trainings and enforcement for both certified and non-certified retailers is required.

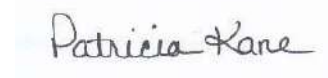
Issue 8 – How can we communicate in a consistent and easy to understand manner what the NOP’s expectations are to the various retail operations?

Guidance and Handbook updates as well as fact sheet fliers on the NOP website will provide clarity on requirements and expectations. Providing education and information aimed at uncertified retailers is critical to the continued consumer confidence in organic products. Enforcement of the requirements is also needed at the non-certified retail operations.

Clear education for certifiers, retailers, and consumers will bring more consistency to organic claims by all retail food establishments. Such education should also stress the value of retail certification, to encourage operations to take this higher road.

Again, we thank the National Organic Standards Board for addressing this topic once again, and for the opportunity to provide feedback.

Respectfully submitted,

A handwritten signature in cursive script that reads "Patricia Kane". The signature is written in black ink on a white background.

Patricia Kane
ACA Coordinator