



October 11, 2017

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National Organic Standards Board
USDA-AMS-NOP
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Submitted via www.regulations.gov

RE: Document # AMS-NOP-17-0024

[Compliance, Accreditation and Certification Subcommittee Proposal: Excluded Operations in the Supply Chain](#)

Dear NOSB members:

Thank you for the opportunity to provide comments on the proposal regarding Excluded Operations in the Supply Chain. MOSA certifies approximately 2000 organic operations throughout the United States. This includes approximately 220 handling operations, although we'd note that supply chain integrity concerns also directly affect organic farmers.

MOSA strongly supports the NOSB and wider organic industry efforts to address fraud and organic supply chain integrity concerns. These concerns have drawn unfavorable attention from the press, consumers, and the Senate Agricultural Committee. It's a real threat to our Seal. As we state in a preface to our recently updated [Import Grain Policy](#), *"anytime there is fraud anywhere in the organic system, it devalues our Organic Seal, and hurts organic farmers. The success of the organic industry has resulted from the integrity of the organic certification process and organic operators' commitment to compliance and enforcement. Fraud cannot be tolerated."*

So, we are generally in support of this proposal's intent to clarify which operations are excluded from certification, bulk labeling requirements, and what constitutes an enclosed package or container. However, we think more clarity is needed regarding the intended scope of the proposal. And, beyond this recommendation for change to NOP 5031 Guidance, we anticipate further regulatory clarification regarding the types of operations that *must* be certified. This proposal is a good step amidst what we expect to be more to come.

The proposal's Section IV. Discussion suggests the addition of language to NOP 5031 Guidance section 4.1, to clarify that the certification exclusion applies only when *"the package or container is labeled 'organic.' When labeled as 'organic,' products must also contain the 'certified organic by' certifier statement and name the handler and ingredient list (if*

applicable.” This echoes some of the labeling requirements that apply to retail products (such as Standards section 205.303(b)). However, excluded handlers as described at section 205.101(b) typically handle nonretail containers as described at section 205.307. These nonretail labeling requirements are less prescriptive, and do not require certifier identification nor ingredients identification. It is not immediately clear whether the additional proposed language is intended to only appear in NOP 5031 Guidance, or whether it also proposes changes to sections 205.101, and/or 205.307. The new language also seems to redefine our current interpretation of products labeled according to section 205.307 as related to exclusions at section 205.101, and it seems to contradict NOP training.

Our current interpretation is consistent with “Organic Integrity in the Supply Chain” NOP training presented to certifiers earlier this year. This training module can be found at <https://www.ams.usda.gov/sites/default/files/media/OrganicIntegrityintheSupplyChain.pdf>. Particularly, reference slides 13 through 17, and 29.

For illustration (similar to the “Template for clarification” in the Proposal’s Attachment A), let’s compare apples and tomato sauce. From the proposal, it seems pretty clear that a distributor would not need to be certified if they were handling cases of jars of organic tomato sauce, if the jars had organic retail labels in compliance with section 205.303. A corrugated cardboard nonretail box holding the jars would not need to include a certifier statement or ingredient statement. On the other hand, if a distributor was handling a similar corrugated cardboard box that contained bulk organic apples, the proposal indicates the distributor must be certified UNLESS: 1. the box is labeled as organic, with certifier identification and, if necessary, an ingredient statement, or, 2. each apple had a sticker *including the certifier identification*.

This seems to require certification for many operations, such as handlers of unlabeled produce, which previously were excluded from a certification mandate. Is this the intention of the proposal?

Some added detail regarding certifier identification on fruit stickers might be a good clarification for examples 3 and 5 in the table in Attachment A. PLU stickers on fruit do not typically include certifier identification information, and so, with the addition of language as in the proposal, for distributors to continue to be excluded, most fruit with stickers would still require additional certifier identification information on the box, or on the tote or other transport unit. While the proposal seems more sound, it would have the impact of “upsetting a lot of apple carts” even for someone like a certified organic operator that applies typical organic PLU stickers to apples before transport. They’d have to change the stickers to include more information, or be sure the box, or cart, is labeled as “organic” and includes certifier identification.

In our experience, most of the time when we review labels on containers intended for nonretail use, these do not include certifier identification statements nor ingredient statements. But, some containers intended for nonretail use still meet the more prescriptive retail labeling requirements as at section 205.303. The proposal may additionally burden some organic operators that label nonretail containers or use transport units like rail cars or tankers.

We do not have a good perspective on what kind of financial impact this all would have, but, we’d expect the negative impacts to be minimal, and offset by benefits to organic integrity in the

supply chain. The proposed changes would be good for organic integrity, and we'd reiterate that the success of our organic industry comes from the integrity of the organic certification process and organic operators' commitment to compliance and enforcement. We'd expect the overall financial impact to be positive, through increased consumer trust, and through bringing more operations into certification. However, this would take some time to be put into place, because produce handlers and other operations would need to make changes to comply.

The proposal also needs more clarity on scope with regard to some terminology used. In a few places in the document, it seems there's been an unintentional interchange of the terms *exempt* and *excluded*, or their derivatives. We ask for more explicit clarification that the recommendation applies only to the excluded handlers at Standards section 205.101(b)(1), and not to exempt operations at section 205.101(a) nor to retail situations at .101(b)(2).

We usually find that examples are helpful to show where regulatory lines should be drawn. With some clarification regarding content of fruit stickers, we support the recommendation that examples be provided. We'd also like to see additional examples that address ongoing supply chain concerns, like ports that receive grain, or storage units, especially for bulk products. We also support the additional recommendations 4, 5 and 6, regarding training, audit trail documentation guidance, and accreditation oversight.

Thank you for your work on this issue. We appreciate your part in giving this topic continued, urgent attention.

Respectfully submitted,

The MOSA Certification Team