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Public Comments to the National Organic Standards Board
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Commercial Availability

We support the intent, and most of this recommendation, but find a few changes are needed.

Recommendation A – Revised petition procedures

This information about availability of sources should be helpful for NOSB to evaluate commercial availability. We support the role of NOSB in determining commercial availability. Although some of this information may not always be available, NOSB needs to make the initial review in order to prevent listings of products known to be available in organic form and screen out frivolous petitions. This initial review can be done at a national/international level as a baseline for making the availability decision, then as certifiers we can look at specific needs and efforts made by the processors requesting the exemption. These criteria need to be added to a Federal Register notice, to amend the official petition requirements of July 13, 2000. Posting on the NOP website is not sufficient as a public notice of the requirements. Criteria cited in Section A should also be referenced in Section C, for certifiers to use in further evaluation of non-availability claims.

Recommendation C – Role of Accredited Certification Agencies

Point 3 - We believe that notification of sources of information regarding commercially available ingredients conflicts with the regulatory role of the certification agency. Certifiers are forbidden at 205.501(a)(11)(iv) from giving advice or providing consulting services to overcome barriers to certification, and helping processors to source ingredients is outside the job of certification.

Point 4- We do not object to filing annual notification reports to NOP concerning any exemptions granted regarding commercial availability. However, if the information is not available to the public at large, we see no point and considerable burden in doing this. If this notification is to be required, then we request that NOP maintain and make public available a database containing this information, and that information collection requirements not be implemented until NOP is able to provide this information to the public. The recommendation should include the proposed role for NOP in compiling and disclosing the information annually.

General

We recognize that this is a difficult part of the rule to enforce, and support private sector development of more effective means of tracking and identifying sources of organic ingredients, such as an interactive database that can provide more timely information to industry. The new requirements that all non-organic agricultural ingredients appear on National list should however, provide incentive for more development of sources of organic ingredients.

Recommended Guidance for Listing of Certifying Agents Name on Labels

This guidance document is useful; especially the background information provided describing the role of the retailer, handler, and processor in certification. The original questions posed by

NOP as guidance questions are limited in applicability, and questions 2 and 3 are slightly redundant. It would be helpful to rephrase the questions to more completely cover the range of situations likely to be encountered, and also to include questions that deal with private label situations that require certification.

Suggested Qs and As:

Q. 1. A retailer is providing labeling to the certified organic processing operation and wants to be identified as the only manufacturer on the product label, but does not process or handle the product. Does this retailer have to be certified?

A. The retailer does not have to be certified, but the certified processor is responsible for maintaining certification. The retailer's name can appear instead of the certified processor if there is a contractual agreement (private label agreement) between the two entities that is disclosed to the certification agency. The certified entity is the party responsible for certification, liability, and the point of contact for the audit trail.

Q. 2. A final retailer is certified by Certifier X and provides labeling (but does no other processing) to the certified organic processing operation, which is certified by Certifier Y. The retailer wants to be identified as the only manufacturer on the product label. Which certification agent should be listed on the label?

A. Certifier X must be listed, since they are the certifying the final handler of the product. Since the retailer has chosen to be certified, they are the final handler.

Q3. Can a final retail establishment that does not process agricultural products be certified as an organic handler under the NOP regulations?

A. Yes, exempt or excluded operations may voluntarily participate in certification. All requirements for handler certification under the regulation must be met.

Q 4: Is labeling by a final retailer considered processing if the retailer does not otherwise handle the product?

A: No. A retailer may provide labeling to the certified processor (under a contractual "private label" agreement) without being certified. A retailer may also display labeling and signage in the retail store for agricultural products that are not in packaged form, including use of the organic seal and certification agent name. This includes bulk sales displays or stickering of produce (205.308).

Q 5 What about retailers that process foods, for instance mixing up deli salads, or cutting cheese and re-labeling? Do they have to be certified? What claims can be on the label?

A – Retailers that process food in the store at place of the sales do not have to be certified. They can sell the product as organic, but cannot label it as certified organic or use the USDA seal. (205.310). If they voluntarily choose to become a certified handler, the name of certification agency must be provided and the USDA seal may be used.

Q.6 What if a certified manufacturer uses more than one processing facility to manufacture a product, and the facilities are certified by different certification agencies? Do all certification agencies need to be listed on the label?

A. No, the agency that certifiers the manufacturer whose name is on the label can be listed for all products. This manufacturer is responsible for the audit trail and acts as the final handler of the product.