

## The National Organic Standards and Retailers

### National Organic Standards: Fact Sheet for Retailers

#### Overall retailer responsibility:

**Q. What are my responsibilities as a retailer under the national organic standards?**

- A. Although retailers are not required to be certified, they do, however, have the responsibility of preventing commingling and contamination of organic products with prohibited substances and of keeping records that show products marketed as organic have been correctly handled from production through delivery to the customer.

See the NOP rule 7 CFR Section 205, specifically subsections [101](#) (Exemptions and exclusions from certification), [272](#) (Commingling and contact with prohibited substance prevention practice standard) and [310](#) (Agricultural products produced on an exempt or excluded operation).

**Q. Do retailers have to have a training program in effect?**

- A. OTA recommends training for retailers and their staff, particularly to make sure there are measures in place to prevent contamination and commingling and to provide adequate record keeping. The Organic Trade Association offers a training program entitled Good Organic Retailing Practices (GORP), with a comprehensive manual and CD showing recommended forms to use. OTA will work with retailers to set up training sessions. Details: contact [dgagnon@ota.com](mailto:dgagnon@ota.com).

**Q. How do provisions in GORP differ with operational compliance with the NOP rules?**

- A. GORP is a “best practices” approach. Sections of GORP refer to requirements if you wish to become certified. These certification requirements may be beyond operational compliance for NOP.

**Q. When does handling become processing for retailers under the NOP?**

- A. When retailers produce organic products off-site to be sold in their stores or sold to other businesses, this qualifies as processing. Under the regulations, processors must be certified.

#### Stream of Commerce:

**Q. Why are there products on store shelves that seem noncompliant with the new labeling provided under the national organic standards?**

- A. Although the National Organic Program fully implemented national organic standards on Oct. 21, 2002, products that had already been certified organic, manufactured, and labeled before Oct. 21 can be sold with their existing labeling until their supplies run out. This means you will see some labeling that does not conform to the new labeling provisions.

**Q. Are retailers and distributors liable for fines if they buy or sell products with noncompliant labels?**

- A. It is not illegal for retailers or distributors to purchase products that were grown, harvested, processed and packaged prior to Oct. 21 with old labels and certification as long as those products do not carry the USDA Organic seal. However, expect an announcement from USDA around mid-year 2003 that lays out further enforcement on old products.

**Contamination:**

**Q. What constitutes contamination?**

- A. Contamination occurs with direct contact of the organic product with prohibited materials (for example, a prohibited fungicide or cleaning agent that might be inadvertently sprayed on organic produce).

Retailers must store wet organic produce above wet conventional produce, for instance, to prevent dripping onto the organic produce during misting or storage of iced produce. Retailers must take steps when using a substance or container that could potentially put a contaminant in contact with organic produce.

However, there is no need for separate storage or refrigeration units so long as organic product is clearly identified.

**Q. If you are filling items from your work cart and have just filled the conventional gala apples section; must you go back into the back and wash your hands before handling the organic gala apples?**

- A. It is a question of degree of exposure and risk. If you have handled conventional apples or produce for several hours, you probably should wash your hands.

**Q. If you drop an organic item on the floor, must it be sold as conventional?**

- A. No. Just pick it up, wash it off, and put it in the appropriate organic section.

**Q. If you're wearing latex gloves, can you touch a conventional item and then an organic item without changing gloves?**

- A. If you are only handling an item or two, there should be no need to change gloves. If you have been using the latex gloves to handle a lot of conventional items, they you should change gloves. Remember: it is a matter of degree of exposure and risk.

**Q. Can I reuse pallets, boxes or other containers that have been used for conventional products for organic products?**

- A. No.

**Q. Can you use wicker baskets in a wet produce rack to separate organic produce from conventional to prevent contamination?**

- A. Yes, provided the wet organic produce is above the wet conventional produce. Side by side baskets would not be a problem. Also, avoid using wicker baskets that have been shellacked.

**Commingling:**

**Q. What should you do if one conventional apple falls into an organic bin?**

A. Take it out. Remove the conventional product and place it where it belongs. If it is a wet product, rewash the organic produce. It is the extent or degree of the exposure that should be prevented, not occasional contact.

**Q. If a customer or produce clerk accidentally puts a loose conventional produce item in with unwrapped organic produce, do I need to dispose of the organic product?**

A. No. Just take out the conventional produce item.

**Q. How can my operation avoid commingling?**

A. The goal is to take steps to store and display organic produce or loose bulk products (i.e., nuts and grains) in such a way that it can't be confused or sold as conventional (and vice versa, where conventional can't be accidentally sold as organic). Post clear signage. Don't stack the same product next to each other. Prevent the opportunity for consumers and staff to mix them by using adequate signage and labels on the products.

**Q. Does produce need to be wrapped to separate conventional from organic?**

A. No. There are many ways to creatively and effectively separate them. When merchandising organic produce alongside conventional produce, use some sort of barrier strips, a different type of produce, or another type of barrier system, such as baskets of herbs or pre-packaged produce, to separate the displays and avoid commingling. Another might be to place bottles of salad dressing or other product in between. This will also help avoid confusion for customers.

**Q. Is there any commingling liability at the check out? In other words, do unwrapped organic products need to be bagged separately?**

A. No. Once the consumer has picked and chosen the product, there is no further responsibility by the retailer concerning commingling. If a customer leaves an item at check out for return, however, it should be treated as conventional.

**Q. Can I ship organic produce on the same truck as conventional?**

A. Yes, but care should be taken when loading the truck so that the organic is clearly identified and packed to avoid contamination (see next question).

**Q. Can I palletize organic produce on the same pallet as conventional?**

A. This depends on the conditions. The products must be in non-permeable containers. If the product is wet, the organic produce must go on top.

**Q. In my cooler, should I separate my organic produce from my conventional?**

A. It should be clearly marked, but can be on the same rack on a different shelf.

**Q. With the new regulations, can I continue to integrate organic produce throughout my department?**

A. Yes

**Cleaners and pest control:**

**Q. What cleaners and pest controls can I use?**

- A. For this information, check out two references. One is the “Generic Materials and Brand Name Products Lists” from the Organic Materials Review Institute (web site: <http://www.omri.org/>). The other is the National List, published by the National Organic Program (see [www.ams.usda.gov/nop](http://www.ams.usda.gov/nop)).
- Q. Are there any measures that I need to take to make sure organic products are not exposed to forbidden cleaning agents?**
- A. Make sure that the surfaces and equipment used for cutting and washing are either cleaned with allowable materials or rinsed thoroughly if non-allowable materials are used. Or provide separate cleaning and equipment (cutting and working surfaces) for the organic products.
- Q. I hire an outside contractor to do the required pest control procedures throughout my store. How can I make sure the correct measures are taken?**
- A. Either talk to the contractor and see if he or she has substances that are allowed, or make sure all organic products in the displays or shelves are properly protected or removed so they will not be exposed.
- Q. Since we only sell organic produce, do we need to use chlorine to clean with? Or can we use a natural product that we sell?**
- A. You can use cleaning products that meet the requirements of NOP and your health and safety codes. Chlorine is not specifically required.

**General cutting and packaging:**

- Q. Do I have to be certified to cut cheese or meat and package for not ready-to-eat purposes?**
- A. No. But you need to make sure you provide an area that has been properly cleaned (including the equipment used) for handling the organic products.
- Q. Can retailers trim and crisp organic leafy greens without being certified?**
- A. Yes.
- Q. Is tap water used for rinsing considered to be an issue with “100% organic” products?**
- A. No. The rule is that water used in organic processing must meet the requirements of the Safe Water Drinking Act, and thus tap water should not be a problem.

**Record-keeping:**

- Q. How do the new non-expiring certificates work? Specifically, how can we be sure that these parties are keeping up with inspections, and remaining in compliance?**
- A. It's up to the certifier to keep up, including scheduling the inspections. It is true that if there's a problem, the company may continue to sell product until the problem is resolved one way or another by USDA. If you believe there is a non-compliant product being sold to you or a questionable certificate, let NOP know (202-720-3252).
- Q. How can our certification files be updated regularly if the majority of the certificates do not expire?**
- A. All certificates are now non-expiring. Names of decertified producers and

companies will be posted on the National Organic Program's web site ([www.ams.usda.gov/nop](http://www.ams.usda.gov/nop)). You can request from certifiers a list of products and the operation's certification renewal dates. After all, although the certificates are non-expiring, they are required to be renewed annually and undergo annual inspections. Otherwise, they will be decertified.

- Q. How can I be sure that my organic suppliers are in compliance with the new regulations? If a division of our stores buys from a local wholesaler, what exactly should they require from them concerning certification? Do they need to be certified organic handlers? If the wholesaler does not need to be certified, does the division need the certification papers with each item?**
- A.** Ask for the supplier's paperwork (receiving records such as bills of lading, invoices, and cash purchase receipts) and check the NOP web site for the decertified list.

If you are purchasing directly from the producer, ask for a copy of the certificate and product verification form if available. If you're purchasing from a distributor, the distributor will keep the records. The retailer only needs to keep the invoice or packing slip from the distributor with the organic items clearly marked. This is part of your record-keeping requirement. The distributor may not need to be certified.

The farmer provides his or her certificate to the first handler. The first handler keeps a copy for his or her records. When the shipper gets to the retailer, boxes need to be clearly identified as organic and the packing slips should correspond to what has been delivered.

If the distributor or produce shipper is certified, the retailer only has to get a copy of the organic certificate of the shipper. Make sure you check off (have a record of) when you receive product (keep a list) from this supplier.

- Q. We are a wholesale cooperative with 300 stores. If we scan all shipper certificates and make them available online to our stores, will these measures satisfy the record-keeping requirement that each headquarters office have a copy of the certificate?**
- A.** Yes.



**Labeling and the USDA Organic seal:**

- Q. Is use of the new USDA seal voluntary?**
- A.** Yes, those producing or selling products containing at least 95 percent organic ingredients may use the USDA Organic seal; they are not required to do so but probably will find it helpful as a marketing tool to get consumers' attention.
- Q. In which section of the new regulations are the labeling requirements addressed?**
- A.** Subpart D (Labels, Labeling and Market Information) of the rule: [7 CFR 205.300 through 205.311.](#)

**Q. We have existing packaging using the old state logo and referencing the certifying agent. Can we use the old materials?**

- A. Yes, as long as the packaging was printed prior to Oct. 21, but any new packaging must meet the new labeling requirement, including listing the correct name of the certification agency. It should say “certified organic” followed by the name of the certifying agent.

The USDA Organic seal can be added to the package as long as the contents of the package meet the new standards and the name of the accredited certifying agent is on the package. If you are using old packaging and your certification agency is listed on the USDA accredited certifier list under a new name, you can't use the USDA Organic seal.

**Q. Can we receive a list of states that have regulations that are more stringent than the national standards? We currently have production in multiple states.**

- A. As of November 2002, USDA has not approved any of the state organic programs. Therefore, the USDA national organic standards are the regulations in place. Watch USDA's National Organic Program web site ([www.ams.usda.gov/nop](http://www.ams.usda.gov/nop)) or become a [member](#) of the Organic Trade Association to keep up to date on any further developments in this area.

**Q. When USDA listed the foreign countries concerning certification, Mexico was not one of them. If we purchase fresh produce and other organic products from outside the U.S. such as Mexico, what do we look for?**

- A. As of Oct. 21, all organic products from outside the United States that are sold in the United States have the same requirements as produce and products grown and processed in the United States, including certification by a USDA-accredited agency. The accredited agency's offices can be located anywhere and provide services worldwide. This would apply to organic products from Mexico. You would look for proof that a USDA-accredited certifier has certified the product.

Also, if a country reaches an agreement with USDA regarding oversight authority, that country has the power to accredit organic certifiers on USDA's behalf. As of Dec. 2, 2002, USDA has accepted the New Zealand Food Safety Authority's ability to accredit organic certifiers on its behalf. The product has to have the certification agent's name on it, and this agent's name should be on USDA's list of accredited agencies.

The United States and another country can also negotiate an agreement that recognizes the other country's national organic program as equivalent to that of the United States. In that case, all products and certifiers from that country could ship into the United States without additional certification or production requirements. As of December 2002, there are no full equivalency agreements regarding the U.S. national organic program.

**Q. Where can we obtain the USDA Organic Law pamphlets for use in our stores?**

- A. You can download and print this information from the National Organic Program web site ([www.ams.usda.gov/nop](http://www.ams.usda.gov/nop)). Click on “Consumer Information” and then “Organic Food Standards and Labels: The Facts.” You can also contact USDA's National Organic Program office directly (phone: 202-720-3252; fax: 202-205-7808 ) and request the brochure in a reproducible format.

**Q. Do the national organic standards apply to packaged goods (such as cereal,**

juices and bread) not found in the produce aisle, especially when it comes to signage?

A. Yes.

**Q. Who will be responsible for enforcing the new regulations and how often will they be in my stores?**

A. The U.S. Department of Agriculture will be responsible for enforcement, with investigations based on complaints. USDA will work with other agencies, such as health and safety inspectors, who will look for possible violations.

**Q. What are the penalties for a fraudulent violation of the regulations?**

A. USDA plans to offer guidance documents identifying minor infractions and non-compliance versus major infractions and non-compliance. The National Organic Program is built on warnings and corrective action rather than immediate penalties.

However, when a business cannot come into full compliance or has intentionally sold products as organic that are not in compliance with USDA's National Organic Program, then fines of \$10,000 per incident can be imposed.

**The following questions and answers related to retailer concerns are among the Frequently Asked Questions and Answers provided on the NOP web site ([www.ams.usda.gov/nop](http://www.ams.usda.gov/nop)):**

**Q. When a retail establishment markets products supplied from a certified producer, in the event the producer is found non-compliant, will the retailer be subject to any legal recourse from the NOP? Do the same rules apply (to the retailer) for products produced by exempt and non-exempt producers?**

A. If a provider of product to a retail food establishment is found to be in violation of the national organic standards and the retail food establishment is not a party to that violation, there will be no action by the National Organic Program (NOP) against the retail food establishment. This holds true for certified producers and handlers as well as those claiming exemption under section 205.101.

Any person, including a retail food establishment, who knowingly sells or labels a product as organic, except in accordance with the OFPA and the national organic standards, shall be subject to a civil penalty of not more than \$10,000 per violation.

Products that have entered the channels of commerce before the certified operation's suspension or revocation will not result in a product recall, unless the non-compliance involves a food safety issue. For further information see page 80627 of the national organic standards.

**Q. As the manager of a retail store, I purchase bulk, certified organic product, then put it in bins where consumers scoop out the amount they want. What signs can I post regarding the organic status of the product?**

A. You may provide the same information as provided on the original container or shipping documents, as described in the National Organic Standards, section 205.308. For example, "If the product is prepared in a certified facility, the retail display, labeling, and display containers may use: the USDA seal; and the seal,

logo, or other identifying mark of the certifying agent ..."

**Q. In the produce area of my retail store, I display bulk product. I don't want to confuse consumers by displaying several different certifier names, seals and logos. What signage options do I have?**

**A.** For non-packaged organic agricultural products, a retail store may make the same claims as those on the shipping documents or container. The USDA Organic Seal, or the certifier's logo, or both may be used for certified products. The only restriction is that the certifier's logo may not be more prominently displayed than the USDA seal (see National Organic Standards, section 205.308). As an alternative, retail stores may simply refer to a product as "organic" and not use any seals or names of certifiers.

**Q. I have a deli in my retail store that makes various multi-ingredient products, where 70-95 percent of the ingredients are certified organic. These products are packaged at the customer's request, and the only thing we put on the package is price information. What organic claims can we make on the signs describing the products?**

**A.** Your signs may indicate that the products you package are "made with (specified ingredients or food group(s))," as explained in the National Organic Standards, section 205.309. You may not list more than three ingredients/food groups. For example, you may sell chicken salad, with a sign that reads, "chicken salad made with organic chicken, celery, and grapes."

You may not represent the chicken salad as "certified organic," use the USDA Organic Seal, or the seal or name of any certifying agent (see section 205.310.)

**Q. As a manager of a retail store, if I buy organic products from a small-scale organic producer who is exempt from certification, how can I label these products?**

**A.** As explained in the National Organic Standards section 205.310, if you buy an organic product from an exempt operation, and you do not process this product any further, you may identify this product as "organic." For example, you could buy apples from an exempt producer and identify these apples to your customers as "organic." But—you may not identify these apples as being "certified organic," you may not display the USDA Organic Seal in conjunction with these apples, nor in any way represent these apples as certified organic.

If you further process these same apples, to make applesauce, for example, you may not identify the applesauce as being made with organic apples, or call it organic applesauce.

---

The Organic Trade Association is the leading business association representing the organic industry in the United States, Canada, and Mexico. Its 1700 members include growers, processors, shippers, retailers, certification organizations and others involved in the business of producing and selling certified organic products.

© 2001, Organic Trade Association.