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April 12, 2010

The National Organic Standards Board
c/o Valerie Frances, Executive Director, NOSB
1400 Independence Avenue, SW
Room 4008 – South Building, Ag Stop 0268
Washington D.C. 20250-0200

RE: Docket Number AMS–NOP–10–0021.

- Guidance Recommendation for Inert Atmospheric Gases in 100% Organic labeled products
- Discussion Paper on the use of the USDA seal in the Made with Label Category

Oregon Tilth thanks the National Organic Standards Board for the opportunity to comment on agenda items for the April 2010 meeting. Oregon Tilth, Inc. is a non-profit 501(c)(3) organization that supports and promotes biologically sound and socially equitable agriculture through education, research, advocacy, and product certification. We represent over 700 members and 1200 certified operators.

Atmospheric Gases in 100% Organic labeled products

Oregon Tilth supports the guidance recommendation proposed for use of Atmospheric Gases with products labeled and sold as 100% Organic. We are pleased to see the CACC recognize the difference between ‘processing aids’ and ‘ingredients’, as defined by FDA and the NOP regulations, and the use of inert atmospheric gases, which are used strictly for environmental modification in packaged food.

As supported by the regulatory language in § 205.301, loss of the 100% organic label occurs when a nonorganic substance listed under § 205.605 or § 205.606 is used during **processing** and functions as an **ingredient** or as a **processing aid**. Inert atmospheric gases used for packaging applications do not meet the NOP definitions of “ingredient” or “processing aid”, therefore they should not impact the 100% Organic labeling claim.

The CACC has recognized this distinction in this guidance document and has specifically recognized the differences between items that act as processing aids, ingredients, and those items used for atmospheric modification in the packaging of organic products. It also specifically addresses that those materials used for atmospheric modifications in packaging of organic products must be BOTH inert AND atmospheric, which Oregon Tilth supports.

To further clarify on accuracy of information in this guidance recommendation, Oregon Tilth would like the CACC to review the following statements made in their discussion and introduction regarding the requirements for processing aids to be listed on the National List (NL). Specifically in the Introduction it states in the second paragraph that “under the NOP the use of such processing aids is restricted in the highest two categories – 100% Organic (must be organic) and Organic (must be on the NL)”. This statement is inaccurate in such that it fails

to recognize that nonagricultural processing aids used in production of a product in the “made with” category must also be on the NL. This is supported by various frequently asked questions posted by the NOP and by the heading of § 205.605. Furthermore, in the discussion portion of the document, the CACC ends with the statement “The CACC re-affirms that the restrictions in the use of processing aids in the 95% and 100% labeling categories: 95% (must be on the NL); 100% must be organic”. This statement should also address the “made with” category and restrict nonagricultural processing aids to those that are listed on § 205.605 of the NL.

USDA seal in the Made with Label Category

Oregon Tilth does not support the further development and discussion of a USDA seal allowance on “Made with Organic ” products. We offer the following input to the Board by addressing the questions and concerns brought up in the discussion document.

We do agree that there should be stronger support and recognition of products in the “Made with Organic” category and we feel this support and recognition is best achieved by consumer education on the requirements and meaning behind the label claim. Since 2002 a great amount of education and marketing has been spent on the recognition of the USDA Organic seal and its presence in the marketplace. To this end consumer education has largely focused on recognizing and buying products with the USDA Seal and consequently there is less general consumer awareness about the different category claims allowed and certified under the same regulation. We feel that with increased consumer education of the product categories and their meanings, the recognition of products in the “Made with Organic” category will naturally increase.

Current regulatory allowances of a “Made with Organic X” statement on the principle display panel (PDP), an organic content declaration on the PDP, and the “Certified Organic by (certifiers name)” statement on the label would seem adequate to ensure that the product is able to stand out in the marketplace in this category. Development and use of a similar seal to the USDA Organic logo on “made with” products would only further confuse consumers on the meaning behind such a seal. One suggested approach that could aid in consistency and full transparency is to look to other international standards, specifically the Canadian Organic Regulation, where the percentage statement of organic content is a requirement to be on the PDP of the finished product label. Under § 205.304 the percentage statement is an option. We encourage the Board to look at other international standards when considering furthering the recognition of products in the “Made with Organic” category.

The second question for input asks whether the use of a USDA seal for “Made with Organic” products would dilute the value of “Organic” or “100% Organic” products. Oregon Tilth believes so. We regularly work with many manufacturers in product and label development. We observe them working hard to develop their products in the “Organic” category, solely so they can use the USDA Organic seal, as they know it is widely recognized in the marketplace. We feel that the current regulatory allowance for this seal on “Organic” products only helps drive industry to further develop their products by using the maximum organic content possible, even for minor ingredients. Without this drive and competition, we imagine a negative impact on the development and use of organic minor ingredients.

Oregon Tilth does not support the development of a seal that is similar in any way to the current USDA Organic seal as this would further the confusion amongst consumers. We have seen in several instances, non-regulated non-certified products, i.e. body care and household cleaners, develop and use marketing logos or seals that are similar in shape and size and color to the USDA seal, and these products are clearly confused by consumers to be certified “Organic” products when they are not certified at all. We also see the same abuse of “look-a-like”

logos used on “Made with Organic” products. If a logo was developed it should not replicate the current USDA Organic seal in anyway as that will only further the gap in consumer understanding of the various product categories.

Lastly, there currently is regulatory allowance for use of the certifier logo on products in the “Made with Organic” category. Many ACA’s have spent a great deal of time and money working to gain consumer confidence in their seals as the certification body of the product. Currently, since the USDA seal is not allowed on “made with” products many manufacturers will choose to use the certifier seal as a method of communicating certification of the product to consumers. Development of a “Made with Organic” seal will only negate the work and effort that ACA’s have done over the years to gain recognition and respect for their seals/logos.

In summary Oregon Tilth encourages the Board to look beyond marketing and logo development to the real heart of why consumers do not recognize products in the “Made with” category. We feel it is because they do not understand the categories and requirements of certification under the regulation, not because of an association to a logo. The development of a logo for this category will only further confuse consumers over what each logo or seal means. A large scale consumer education campaign with educational materials used by retailers, depicting the differences in the categories and what the “made with organic” category actually means to them, would have the biggest impact on generating further confidence in these products.

Once again, thank you for your close consideration of our comments.

Oregon Tilth, Inc.