



260 SW Madison Ave. Ste 106 | Corvallis, OR 97333 | www.tilth.org | PH 503.378.0690 | FX 541.753.4924 | organic@tilth.org

March 9, 2011

Toni Strother
Agricultural Marketing Specialist
National Organic Program,
USDA-AMS-NOP
1400 Independence Ave., SW.,
Room 2646 So., Ag Stop 0268
Washington, DC 20250-0268

Via www.regulations.gov

Docket: AMS-NOP-10-0045; NOP-10-03

RE: NOP Draft Guidance Concerning “Made with Organic” Products, Product Composition and Use of Percentage Statements.

Dear Ms. Strother,

Thank you for the opportunity to provide comments to the National Organic Program regarding the NOP guidance on the above mentioned topics with regard to “Made with Organic” Products.

Oregon Tilth, Inc. is a non-profit 501(c)(3) organization that supports and promotes biologically sound and socially equitable agriculture. Oregon Tilth offers educational events throughout the state of Oregon, and provides organic certification services to organic growers, processors, and handlers internationally. An NOP accredited certifier since 2002, Oregon Tilth currently certifies over 650 farms and ranches and over 600 handlers in more than 35 states affording us a broad perspective of current practices and challenges faced by organic producers and handlers. This perspective also extends to the anticipated successes and challenges that the draft guidance will affect upon them.

Product Composition

Oregon Tilth supports this Draft Guidance specifying that the product composition of a product labeled as “Made With Organic” must only contain non-organic ingredients that are specifically listed on 205.605. There has been continuous confusion of this requirement in the past by certifiers and Oregon Tilth has always read the regulation and OFPA to require that the remaining 30% of ingredients in a made with product must be of ingredients listed in section 205.605 if they are non-agricultural. We concur with this guidance and thank you for clarifying this for all certifiers.

However, in the background portion of this guidance it states that “Any synthetic substance may be used to manufacture a substance on 205.605, however if the synthetic is present in the final 205.605

substance the synthetic must also be on the National List and allowed for the intended use”. The policy statement that follows this background information neglects to further clarify this point. We would urge the NOP to consider the ramifications of a prohibition on ingredients (carriers, preservatives) in a 205.605 (non-agricultural) listed material and the requirements for any synthetic item present to be on the National List. We would also urge the NOP to remove the statement that implies this prohibition from the background statement to avoid any confusion.

For example, there are several ingredients allowed as listed on 205.605 that have undergone review by the NOSB and contain synthetic ingredients which are essential in their form and function of the ingredient. TAP Reviews are conducted on these items prior to being listed on 205.605 with full disclosure that these ingredients remain in the items.

- Vitamin D3, as an example contains synthetic dispersing agents that are critical to the use of Vitamin D3 so that it disperses and carries in the product, and is safe to use. If the NOP were to provide this guidance without correction to the background statement mentioned above it would essentially prohibit the use of Vitamin D in milk.
- Enzymes, as an example contain diluents, preservatives (to prevent microbial growth), antioxidants, and other food grade substances. Several of the preservatives and antioxidants are synthetic and do not appear on 205.605, however they are critical to their form and function as enzymes. The TAP review conducted on enzymes clearly outlines the materials commonly used and the NOSB did not vote to annotate or prohibit these additives in enzymes.

This background mention of a prohibition on synthetic ingredients in 205.605 listed items sets a very large change to current practice.

The guidance here in this section, which implies that all ingredients in a 205.605 listed item must be on the National List is contradictory to previous Q&A and is not the common industry practice. In addition, it does not address the matter in “Organic” labeled products and such, **this mention in the background section should be removed for further consideration by the NOP for all 205.605 listed items in both “Organic” and “Made With” products.** Research on the implications of such a requirement for current products on the marketplace and the hindrance in development of products must be considered.

Furthermore, we note that the term “Natural” is used under point 2 of the policy statement and should be changed to be consistent with the titles of 205.605 (a) and (b) and should be listed as Non-synthetic and Synthetic Ingredients.

Statement of Percentage of Organic Ingredients

Oregon Tilth generally supports the guidance provided by the NOP for the statement of Percentage of Organic Ingredients. The clarification is appreciated in order to provide this consistent guidance to all certifiers so that labels are consistently being evaluated from one certifier to the next.

We support the guidance and policy that requires the “Made with Organic (specified ingredient or group)” statement on packaging **when** a percentage statement is used. This will help consumers to

recognize the product category that the product is certified under especially for those products where the percentage statement may exceed 95% organic.

However, there are discrepancies noted in your proposed guidance that should be corrected prior to final publishing:

- In the policy statement (first paragraph) it is stated that “Made with (insert number)% organic ingredients” is not acceptable variation of the made with statement.
- Under the 4th paragraph of this same section it is stated “Acceptable variations of the percentage statement” and it lists “Made with X% Organic Ingredients” as an acceptable variation to the percentage statement.

We understand that in the first bullet above the unacceptability is referring to the “Made with Organic” statement and the second is referring to the percentage statement, however we feel this is confusing and the allowance of this term under the percentage statement should not be allowed, as it could be viewed as a second made with statement.

Furthermore, with regard to this draft guidance Oregon Tilth is disappointed that the NOP has not described and further defined their policy defining food group and ingredient and organic and non organic forms of these two groups when they are included in the made with statement. Oregon Tilth has received direct guidance from the NOP regarding this on several occasions. For example, a label claiming “Made with Organic Blueberries” containing organic blueberries and non-organic blueberry paste, we have been told is not allowed. The two are different forms of the ingredient, one being fresh and another being a multi-ingredient sweetened paste. Confirmation that the ingredients are allowed was given, however guidance to Oregon Tilth was that the “Made With Organic” statement could not include the word blueberries, in essence, classifying the blueberries as a food group, which is contradictory to the regulation as written. We would encourage the NOP to revise this guidance to include this clarification and policy as well so that all certifiers are aware and reviewing labels in this category consistently and fairly.

Oregon Tilth appreciates the opportunity to comment on the draft guidance documents and thanks the NOP for carefully considering our comments.

Respectfully submitted,

--

Oregon Tilth, Inc.