



470 Lancaster Drive NE | Salem, OR 97301 | www.tilth.org | PH 503.378.0690 | FX 503.378.0809 | organic@tilth.org

May 5th, 2008

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: Clarification of Definitions (Docket No. AMS-TM-08-0021)

Dear NOSB:

Oregon Tilth appreciates the opportunity to submit comments on the ongoing and very complex discussion regarding the definitions of agricultural and non-agricultural.

Oregon Tilth would like to present 5 key concepts that should remain central to this discussion as we move forward. We would also like to present an additional option for consideration based on the options presented in the Material Working Group Discussion document.

1. The intent of OFPA is:
 - a. To establish national standards governing the marketing of certain agricultural products as organically produced;
 - b. To assure consumers that organically produced products meet a consistent standard;
 - c. To facilitate interstate commerce in fresh and processed food that is organically produced.
2. The definition of organic production is a production system that is managed in accordance with the ACT and regulations in this part to respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity.
3. § 205.605 of the National List should be reserved for substances that are technically impossible to be organically produced. Technically *possible* candidates *include* anything extracted or isolated from agricultural material, or, anything composed at formulation of 95% agricultural material available in organic form.

4. The term synthetic should not include the effects of normal food processing activities. In other words the term “synthetic” should not be applied to an otherwise non-synthetic substance that is formulated or manufactured by processing, as processing is defined in the Act. In this respect, there is no such thing as a synthetic agricultural product, but rather a “processed agricultural product”.
5. The term organic is related to the process of production and handling, rather than the characteristics of the resulting product.

With respect to the Material Working Group discussion document, Oregon Tilth supports several of the concepts presented in the ‘Options to Consider’, but we do not find one that we can fully support. We have attempted to take the “best of the best” from our perspective, add some extras, and thread together an additional option – ‘Option Tilth’.

- Adopt as *guidance* the following clarification of “agricultural” to apply to the OFPA definition of “agricultural product”:

OFPA Definition of Agricultural Product. Any agricultural commodity or product, whether raw or processed, including any commodity derived from livestock, that is marketed in the United States for human or livestock consumption.

Guidance - Agricultural products are those that are “managed by humans”.

Managed by humans - the intentional act of gathering, producing, raising, or growing, domestically or in designated wild-harvest areas, by persons for human or livestock consumption.

Oregon Tilth does not agree that lines between agricultural and non-agricultural should be drawn based on their taxonomy, i.e. existence or non-existence of fruiting bodies, or the extent to which a product is processed. The focus should be whether they are living organisms managed by humans and intended for human or livestock consumption.

- The definition of non-agricultural is problematic and should either be revised or removed completely. We feel a revision is more appropriate since there are some substances, such as water and minerals that are generally accepted as non-agricultural. While the current definition of non-agricultural is ambiguous, the general concept is very engrained into our regulation and is extremely useful when describing why certain substances are allowed in, or, excluded from certified products. Therefore, we recommend the following definition:

Nonagricultural. A substance that is not raised in or derived from an agricultural system, such as a mineral, or atmospheric gas. For the purposes of this part, a non-agricultural ingredient is also anything technically impossible to be organically produced.

“Technically impossible” refers to either a lack of standards, or, the current production methods available for the substance in question are limited to materials and practices that are not consistent with the standards for an organic product.

As presented in Appendix F of the MWG document, the discussion of agricultural and non-agricultural continues to come back around to the questions of “What can be organic?” and “If something is organic, must it be agricultural?” In order to answer this question, Oregon Tilth

brings together the definition and guidance of “agricultural” as presented above, with the NOP definition of “organic production”. The synthesis is as follows:

Agricultural products, raw or processed, that are managed by humans in accordance with the Act and regulations in this part to respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity, can be certified organic.

So long as a product could potentially fall under this synthesis and does not meet our proposed definition of non-agricultural, it should be considered for § 205.606.

- Change the regulation so that the title of § 205.605 becomes:

Nonorganic substances allowed in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)).”

- The corresponding regulatory text then becomes:

The following nonorganic substances may be used in or on processed products labeled as “organic” or “made with organic (specified ingredients of food group(s))” only in accordance with any restrictions specified in this section.

This approach provides a place for non-organic inputs that are either non-agricultural substances (natural or synthetic), or, substances that do not belong on § 205.606 because they cannot be certified to the organic production or handling standards.

We support the retention of dividing the processing list into agricultural, non-organic non-synthetic, and non-organic synthetic because it caters to the organic preference step-wise approach of using materials, which seems to have been lost in time.

A central issue to this discussion is yeast. Yeast is currently listed on § 205.605 as a nonagricultural nonsynthetic substance. However, organic bakers yeast, yeast autolysate, nutritional yeast and yeast extracts used for flavoring are currently on the market in commercial quantities. The yeast extracts are produced in the United States under the NOP handling and composition requirements. The other yeasts are produced in Germany, but are also certified to the NOP handling requirements. To further complicate matters, the Q & A section of the NOP website explicitly states that yeast cannot be certified organic because it is listed on § 205.605 as a non-agricultural substance.

While Oregon Tilth cannot positively point to yeast as being “agricultural” in a traditional sense, we can say yeast are living organisms and their production relies primarily on agricultural material (greater than 95% at formulation) that is available in organic form. Yeast may not be “grown on a farm” but yeast products can be manufactured in such a way to meet the standards for a processed organic product. We recognize that yeast production has definite agricultural and environmental implications and we feel that these should and can be addressed by applying organic principles to yeast used in organic food. We also recognize that the EU has expressly recognized yeast in food and feed as eligible for organic production, and Article 20 of the new EU Council Regulation No. 834/2007 provides general rules for the production of organic yeast.

While Oregon Tilth strongly believes the handling requirements of § 205.270 provide adequate standards for

certifying organic yeast, we accept that the larger community may feel more comfortable if organic yeast guidelines are further defined. The appropriate place to house such guidelines is in a guidance document that would be circulated by the NOSB for public comment, adopted by the NOP, and posted to the NOP website.

Also central to the discussion of organic yeast is the NOP interpretation of § 205.237(a). The concern is if microorganisms are classified as agricultural, livestock producers would be required to use organic direct fed microorganisms (i.e. yeast) while processors making products for human consumption could potentially claim yeast as commercially unavailable and use a non-organic form. The difference in composition requirements under § 205.237(a) and § 205.606 creates an unlevel playing field that creates undo burden on certain sectors of the industry. The following is a possible solution to consider:

- Clarify that nonorganic substances in § 205.605 may be used in formulation of multi-ingredient processed organic products. For example organic bakers yeast can be produced organically, using nonorganic yeast seed (a single yeast cell covered under the listing of “microorganisms” on § 205.605), that is cultured in accordance with the 95/5 composition requirements and handling requirements of § 205.271.

Once processing guidelines for organic yeast products are developed and accessible to the industry via the NOP website, those specific products could be petitioned to § 205.606. In other words, retain “microorganisms” on § 205.605 as non-agricultural **substances** and list individually baker’s yeast, nutritional yeast, etc. on § 205.606 as agricultural **products** subject to commercial availability.

Under this working theory, a distinction can be made between a microorganism (single cell) classified as a non-agricultural substance, and the organic processed product it can produce when formulated in accordance with the requirements of § 205.301(b). The key is to make a distinction between something that is strictly agricultural and that which can be organic because several of its components are agricultural and available in organic form. This approach would support the following benefits presented in Option D while continuing to support the organic production of the yeast products currently on the market:

- Direct fed microorganisms that are widely used in livestock feed would continue to be allowed under the livestock feed requirements of § 205.237 as non-synthetic non-agricultural feed additives.
- The processing standards would be comparable to EU regulations that include microorganisms as permitted substances in organic food, but also provide for the production of organic yeast products.

In the spirit of this discussion, Oregon Tilth also encourages the NOSB to continue to address the inconsistency presented by the broad category listing of natural flavors on § 205.605. The following conditions mutually exist:

- The Q & A section of the NOP website explicitly states that yeast cannot be organic due to its non-agricultural listing.
- The Q & A section of the NOP website explicitly states that natural flavors, also listed on § 205.605, can be certified organic.
- The NOP Guidance document of February 16th, 2007 states that “*Flavors do not need to be petitioned to be placed on § 205.606 as long as they meet the definition of a flavor, according to FDA, and they are*

from nonsynthetic sources and are not produced using synthetic solvents and carrier systems or any artificial preservatives”.

The mutual existence of these clarifications lack logic and create an unacceptable inequality amongst the industry. We encourage the NOSB to use the various types of natural flavors on the market as examples when sorting out the definitions of agricultural, non-agricultural, synthetic and non-synthetic. We also urge the NOSB to always ask the following two questions when evaluating any substance or product:

- Can it be produced or handled in accordance with the ACT and the regulations in this part?
- Is it available in organic form?

With respect to the discussion on synthetic and non-synthetic, we encourage the Board to persevere with the NOSB Clarification documents of August 2005 and the NOP Recommended Framework to Further Clarify the Definition of Synthetic document of March of 2006.

Once again, thank you for receiving and considering our comments.

Gwendolyn Wyard on behalf of Oregon Tilth, Inc.
Processing Program Reviewer

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.