

**National Organic Standards Board
Certification, Accreditation and Compliance Committee
Discussion Paper on the use of a USDA Seal in the
“Made With” Labeling Category**

March 8, 2010

Introduction

The number of “made with organic” products in the marketplace continues to increase. This is good for organic agricultural volume. It is also good for consumers to have more choices on the shelf that contain 70% or greater organic content. However, agricultural products in packages that qualify for the “made with organic” labeling category have created questions and confusion in the consumer community.

In order to communicate the organic merit of these products to consumers, absent the USDA seal, various labeling strategies have emerged which have confused and at times misled the public. Adding to this confusion, are non-certified products with less than 70% organic that are making using the word “organic” outside of the ingredients statement, which is non-compliant with NOP requirements.

Finally, some manufacturers include the word “organic” in their Brand Names. This places the word “organic” on the principal display panel irrespective of whether the product complies with the handling and composition requirements of the National Organic Program 7 CFR part 205.

Background

The regulatory requirements for the handling and composition of products eligible to display on its principal display panel “made with organic ...” are found in the following sections of 7 CFR

205.102 Use of the term, “organic.”

Any agricultural product that is sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must be:

- (a) Produced in accordance with the requirements specified in §205.101 (organic system plan) or §§205.202 through 205.207 (crops) or §§205.236 through 205.239 (livestock) and all other applicable requirements of part 205; and
- (b) Handled in accordance with the requirements specified in §205.101 or §§205.270 through 205.272 and all other applicable requirements of this part 205.

§ 205.105 Allowed and prohibited substances, methods, and ingredients in organic production and handling.

To be sold or labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” the product must be produced and handled without the use of:

- (a) Synthetic substances and ingredients, except as provided in §205.601 or §205.603;
- (b) Nonsynthetic substances prohibited in §205.602 or §205.604;
- (c) Nonagricultural substances used in or on processed products, except as otherwise provided in §205.605;

- (d) Nonorganic agricultural substances used in or on processed products, except as otherwise provided in §205.606;
- (e) Excluded methods, except for vaccines: *Provided*, That, the vaccines are approved in accordance with §205.600(a);
- (f) Ionizing radiation, as described in Food and Drug Administration regulation, 21 CFR 179.26; and
- (g) Sewage sludge.

§ 205.270 Organic handling requirements.

(c) The handler of an organic handling operation must not use in or on agricultural products intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” or in or on any ingredients labeled as organic:

(1) Practices prohibited under paragraphs (e) and (f) of §205.105.

(2) A volatile synthetic solvent or other synthetic processing aid not allowed under §205.605: *Except*, That, nonorganic ingredients in products labeled “made with organic (specified ingredients or food group(s))” are not subject to this requirement

§ 205.301 Product composition.

(c) Products sold, labeled, or represented as “made with organic (specified ingredients or food group(s)).” Multiingredient agricultural product sold, labeled, or represented as “made with organic (specified ingredients or food group(s))” must contain (by weight or fluid volume, excluding water and salt) at least 70 percent organically produced ingredients which are produced and handled pursuant to requirements in subpart C of this part. No ingredients may be produced using prohibited practices specified in paragraphs (f)(1), (2), and (3) of §205.301. Nonorganic ingredients may be produced without regard to paragraphs (f)(4), (5), (6), and (7) of §205.301. If labeled as containing organically produced ingredients or food groups, such product must be labeled pursuant to §205.304.

(f) All products labeled as “100 percent organic” or “organic” and all ingredients identified as “organic” in the ingredient statement of any product must not:

- (1) Be produced using excluded methods, pursuant to §201.105(e) of this chapter;
- (2) Be produced using sewage sludge, pursuant to §201.105(f) of this chapter;
- (3) Be processed using ionizing radiation, pursuant to §201.105(g) of this chapter;
- (4) Be processed using processing aids not approved on the National List of Allowed and Prohibited Substances in subpart G of this part: *Except*, That, products labeled as “100 percent organic,” if processed, must be processed using organically produced processing aids;
- (5) Contain sulfites, nitrates, or nitrites added during the production or handling process, *Except*, that, wine containing added sulfites may be labeled “made with organic grapes”;
- (6) Be produced using nonorganic ingredients when organic ingredients are available; or
- (7) Include organic and nonorganic forms of the same ingredient.

§ 205.304 Packaged products labeled “made with organic (specified ingredients or food group(s)).”

(a) Agricultural products in packages described in §205.301(c) may display on the principal display panel, information panel, and any other panel and on any labeling or market information concerning the product:

(1) The statement:

- (i) “Made with organic (specified ingredients)”etc.

(b) Agricultural products in packages described in § 205.301 (c) must: ... etc.

(c) Agricultural products in packages described in § 205.301 (c) must not display the USDA seal.

Discussion

While the use of the USDA seal for organic products is optional, most producers of organic products have chosen to use it, and consumers have come to strongly equate the seal with organic integrity and USDA certification. The creation of a similar but less prominent seal for the “Made with Organic” category would facilitate greater consumer confidence in these products and overall growth of the category.

Although a similar amount of work, inspections and cost are invested by organic food producers in the certification of “made with organic” products, consumer recognition for “made with organic” products is not as high as for “organic” products in the marketplace. As a result, the actual size of the organic products market is underestimated. The total amount of organic acreage, production, processing, inspection and oversight needs to be accurately accounted for in the public and governmental sectors. Continued growth of the organic sector and increase in organic acreage is dependent on the visibility of organic products in the marketplace. The growth of the organic sector – and consequently, economic analysis and investment in it -- is hampered by the current confusion between certified “made with organic” products, mislabeled products making some organic claim, and completely uncertified products.

The USDA ‘Organic’ seal makes organic products more visible in the marketplace, but it is not applicable to products in the “made with organic” category – they are certified, but cannot use the seal. If there were a seal on 70% organic products increase their recognition by the consumer.

We believe that the use of some type of USDA organic seal on products in the “Made with” category would reduce the current labeling confusion and questionable practices, and legitimize the efforts of the producers of “made with organic” products. However, the committee also recognizes that the addition of the USDA seal to “made with organic” products has the potential to increase confusion between the “organic” (95+%) category and the “made with (70-95%) categories.

We feel that resolving the current problems for the “made with” category requires that we borrow on the recognition of the USDA seal. The committee considered several options including using the current seal in a different color ink; and/or adding a “%” to the lower field of the current seal.

Ultimately, a consensus formed around a proposal to use the USDA organic seal, at ½ the size of the largest type size on the panel, on the back panel ONLY, near the “certified organic by” statement and where the certifier’s logo may appear. This use of the seal will convey the integrity and legitimacy of the USDA certification for “made with organic” products in the same way as it has for “organic” products.

Adding the USDA seal to the back label of “made with” products simplifies labeling and adds a level of understanding of the USDA organic program. The inclusion of a USDA seal will

enhance consumer confidence and add visibility to the volume of organic products in the marketplace.

The addition of the USDA seal, as described above, does not change the certification process, production or processing practices. However, the marketing of “made with organic” products will be enhanced by employing a simple, easy to understand practice that minimizes confusion and increases the recognition and value of organic products.

To facilitate the further deliberation of the committee and the Board on this matter public input would be helpful on the following questions.

- 1) Should there be stronger recognition of products in the “made with organic” category? What regulatory approaches would facilitate stronger consumer recognition of the “Made With Organic” category?
- 2) Will the use of a USDA seal for “Made with organic” product dilute the value of “Organic” or “100 % Organic” products? Are we heading down the wrong road in putting a USDA seal on “Made With “product?
- 3) Should such recognition employ the current USDA organic seal design or a variant of this seal (e.g. different color, indication of organic content 70-95%, limit size of seal compared with that used on a 95+% product), or should it be a different design entirely ? Do you support the committee consensus of a smaller USDA seal near the “Certified Organic By” statement?

Moved: Joe Smillie Second: Joe Dickson

4 – Yes 0-No 0-Abstain 1 Absent