



Accredited Certifiers Association, Inc.

*Accredited certifying agents working together to ensure
the integrity of organic certification in the United States*

April 7, 2017

Dr. Paul Lewis, Standards Division
National Organic Program
USDA-AMS-NOP
1400 Independence Ave. SW
Room 2646-So., Ag Stop 0268
Washington, DC 20250-0268

Re: AMS-NOP-16-0085
NOP 5037 Draft Guidance Calculating the Percentage of Organic Ingredients in Multi-Ingredient Products and NOP 5037-1 Sample Calculation Worksheet

Dear Dr. Lewis:

Thank you for the opportunity to provide comments to the National Organic Program regarding the Draft Guidance on Calculating the Percentage of Organic Ingredients in Multi-Ingredient Products and the accompanying Sample Calculation Worksheet. The Accredited Certifiers Association (ACA) is a non-profit educational organization, and our membership includes 54 USDA Accredited Certification Agents. We convened a Working Group from our membership to develop our comments. Additionally, feedback from the "Sharing Our Perspectives" session at the recent ACA training was also considered in drafting of these comments.

Overview

The ACA appreciates the work of the National Organic Program on NOP 5037 and 5037-1. We support the goal of clarifying the process for calculating the percentage of organic ingredients in multi-ingredient products. While our Working Group discussed a series of recommendations and open questions related to the Draft Guidance, we found it challenging to comment in a unified way since current practices, and interpretation of the Draft Guidance, were so varied. The main area of difference among certifiers was whether or not the removal of salt and water from all salt- and water-containing sub-ingredients described should be required. One perspective voiced within our group was that this requirement was clear and fairly simple, being consistent with what has been on paper since the Preamble to the USDA Organic Regulations explained that "...percentage calculations are based on the ingredient weight, excluding water and salt" (Federal Register Volume 65, Number 246). However, other

participants in our Working Group expressed there is not a standard industry practice of adhering strictly to this requirement in all cases. Some members in the Working Group expressed that, while the guidance seemed suitable for most liquid or water-based products, it did not seem applicable to ingredients such as doughs and breads, or cooked grains and legumes as ingredients in prepared foods. It was noted that in ingredients such as these, the water is partially removed during the cooking process, and intentional dilution with water was not an issue of concern. Flavors and other minor ingredients were also a subject of question. Not all members of our Working Group were united behind the request to remove water and salt from all ingredients as described and felt consideration should be given to exclusions beyond those already identified.

Next, we are including a suggested replacement for the Sample Calculation Worksheet, as we recognize this is a critical tool and one that is referenced extensively by the Draft Guidance. We believe this spreadsheet represents a literal application of the Draft Guidance as written and should be used for calculations *as applicable*. The members of our group felt this worksheet would be more user friendly for inspectors and reviewers.

Finally, since the Final Guidance is certain to require major shifts in process among some certifiers, and shifts in formulations from manufacturers, we request an adequate implementation period before the Final Guidance goes into effect. For some certification agencies, little implementation time is needed since the Draft Guidance is close to current practice. But in other cases, tens of thousands of product formulas will need to be revisited by the certifier. In situations where recalculation results in the need for re-labeling of products, label re-design and re-printing efforts may be significant. These efforts might be further complicated in cases where label updates are already in process because of new FDA nutrition labeling requirements. Suggested implementation periods ranged from 1-3 years.

Beyond these main observations, we include several additional topics where further clarification is requested.

Comments/Requests on NOP 5037

a) Section 2: Background

This section notes, “The scope of this guidance does not cover how the use of sanitizers or other materials affects the 100% Organic labeling claim.” We would like to point out that this continues to be an area of inconsistency among certifiers, and we request that NOP prioritize guidance in this area.

b) Section 3.1.1: Certified “Organic or Made with Organic” ingredients that are themselves composed of multiple ingredients

It was noted that the percent of water and salt in *non-organic* ingredients is not addressed in the Draft Guidance, and this section might be an appropriate place to address it. (Section 3.1.2: Added Water and Salt deals exclusively with *organic* ingredients.) Consideration given to salt and water content in non-organic ingredients could work to increase overall organic content in products where content is near the minimum for a specific label category.

c) Section 3.1.2: Added Water and Salt

We had several questions/comments about this section:

- The first sentence reads: “The percentages of water and salt *added* during the manufacture of the ingredient, and that *remain* in the ingredient, should be disclosed by the organic ingredient supplier.” While the instruction is appreciated, it is recognized that this could be complicated, as not all suppliers might be willing or able to provide this information. It is also noted that examples would be very helpful in this section. We suggest the inclusion of some prepared foods, such as sandwiches or burritos containing bread or cooked rice or beans, along with non-organic or non-agricultural ingredients, as examples. We would also like to see some examples that include flavors and other minor ingredients.
- In general, we found use of the phrase *FDA Standard of Identity* to be complicating; participants weren’t sure the phrase was necessary and wondered if other language could be used to convey the same meaning. If a list of applicable products could be used instead, for instance, that would be preferred. If FDA regulations are referenced, ACAs commonly need assistance with navigation and interpretation of these.
- The document is unclear whether water and salt only need to be excluded when they are ingredients *declared* on the ingredients label or if water and salt must be removed from all products, regardless of ingredient declaration.

d) Section 3.1.3: Organic Claim vs Organic Content

While it seems generally helpful to point out that processing aids aren’t counted in the calculation of organic ingredients, it is noted that there will be rare circumstances when a processing aid will remain in the finished product and should be calculated, as the amount could be enough to move the total organic content under the target percentage. Cellulose added to shredded cheese as a flowing aid was given as an example. A separate section of this document dedicated to processing aids would be helpful.

e) Section 3.2.1: Processed single ingredients

The meaning of the phrase “significantly different” in the first paragraph of this section is not clear. If the phrase is intended to refer to a change from a raw agricultural commodity to something that is no longer a raw agricultural commodity, then we request for that specific language to be used. If that interpretation is not what is intended, then clarification, including a larger number of examples would be useful. We note that the second example, “Sliced organic apples that have been dipped in a solution composed of materials on §205.605,” is particularly difficult to consider because of uncertainty in how much of the solution would remain on the apple slices. Additionally, including sugar as a raw agricultural commodity compared to apples seemed to confuse the issue.

f) Section 3.2.2: Single ingredients that are raw agricultural commodities

This section implies that the use of sanitizers on raw agricultural commodities does not affect the overall calculation. The section does not address labeling claims, and again, we urge NOP to provide guidance on this.

g) Section 3.3.1: Juices with an FDA Standard of Identity

We found several items in this section noteworthy:

- This heading is misleading because most juices do not have an FDA Standard of Identity. The FDA 21 CFR 101.30 is titled "Percentage juice declaration for foods purporting to be beverages that contain fruit or vegetable juice." This section is about the percentage juice declaration on labels. Its purpose is to avoid misleading labeling of products that are not juice. A better heading would be "Juices with an FDA specified minimum brix level."
- The phrase *FDA Standard of Identity* is not used in the National Organic Standards and is confusing in this draft guidance, and so we ask that use of the phrase -- and direction for certifiers to refer to that part of the FDA regulations -- be carefully considered. Is the overall intent to require that when an FDA Food Standard specifies that water does not have to be disclosed on the ingredient statement, then it does not need to be excluded when calculating the percentage of organically produced ingredients? If so, then we submit that the only instances of this include milk, tomato concentrates, and a few specific syrups (cane, maple, and sorghum). Simply listing these in the Final Guidance would save a lot of confusion, as noted in our comments on Section 3.1.2. However, if a simple list is not provided, please include instructions on how to access the needed information. Also, it seems that these should be in a separate section that is not about juice.
- It is noted that ingredients reconstituted from concentrate are not always

described as such on the principal display panel or information panel. Vanilla extract was given as an example, along with lemon juice as an ingredient in mayonnaise.

h) Section 3.3.2: Juices without an FDA Standard of Identity

Again, our preference would be to use the phrase *FDA specified minimum brix level* rather than *FDA Standard of Identity*.

i) Section 3.3.3: This section is missing or the document is incorrectly numbered.

j) Section 3.3.4: Carbonated Beverages

In this section, it would be helpful to see a standard mechanism for calculation -- one that is accepted by industry. Please provide a couple examples of more complicated products such as diet sodas or flavored waters.

k) 3.3.5 Chicken stock, soy beverages, almond beverages, rice beverages, ready to drink teas/coffees, and similar products containing added water

We recommend the following wording for the first paragraph of this section: "Published FDA or USDA standards allow water to be added to a food or processed food ingredient product without further disclosure on the product label. Applicants for certification must provide such guidance as justification for including water in a liquid ingredient in the organic percent calculation. Liquid ingredients such as plant based beverage bases do not have FDA standards of identity. Therefore, only the solids content of these ingredients may be used in the organic percent calculation. The organic percentage of the multi ingredient formulation can only be calculated using the minimum solids content of the liquid ingredient per its manufacturing specifications. The solids content of each lot of the liquid ingredient (s), whether produced on site or by an approved vendor must be available for verification."

l) 3.4: Excluding salt from the organic calculation

We suggest deleting: "Any minor amounts of anti-caking agents in the salt are also excluded if they will not result in a final certified "organic" product that contains less than 95% total certified organic ingredients or a certified "made with organic (specified ingredients or food groups)" product that contains less than 70% total certified organic ingredients."

Comments/Requests on NOP 5037-1

- a) We appreciate that the worksheet asks specifically about processing aids so they are clearly listed.
- b) Inspectors will not be able to easily compare information contained in the calculation spreadsheet to production records at inspection. Production records typically have salt

and water within the overall calculation, and spreadsheets can be set up to show this information while still omitting it from the overall calculation as applicable. Our proposed Calculation Spreadsheet demonstrates this.

- c) The calculation tool can be simplified by avoiding “off spreadsheet” calculations; in other words, one should be able to perform all the necessary calculations on a single spreadsheet. Additionally, simplified rounding will make the process prone to fewer errors.
- d) In general, the calculation tool must be easy to use, understandable, and accurate.

Summary

We ask that the NOP:

- Clarify answers to the questions as outlined above, providing additional examples in requested areas.
- Improve the calculation worksheet so that it is more accurate, understandable, and user friendly.
- Consider an implementation period for the Final Guidance.
- Address how the use of sanitizers or other materials affects the 100% Organic labeling claim. While it is understood to be outside the scope of this document, we request instruction on that topic as soon as possible.

We thank you for the opportunity to provide comments on this document.

Respectfully submitted,



Jennifer Cruse
ACA Coordinator

Enclosure