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The New “Made With Organic” Marketplace: Exploring New Options in Light of 205.606 Regulatory Changes

By Sheila Linderman

John Smith, the owner of a small organic company, just sent in all of the renewal paperwork for his organic certification, including formulations for products that he has had on his organic certification since October 21, 2002—the day that the National Organic Program (NOP) went into effect.

Then, one day he gets a note from his certifier saying that the products that have always been labeled “organic” suddenly must be labeled as “made with organic” and will no longer be able to bear the prized USDA seal.

He calls his certifier and starts begging, crying, swearing and claiming that he doesn’t understand, because his products are, in actuality, 97 percent organic. Furthermore, he states with righteous indignation, the remaining ingredients are the finest and rarest—the very ingredients that make his products unique—but alas, they are not commercially available in organic. The certifier has always approved the formulations as organic in the past. Why —suddenly—are they now in a different certification category?

There are many organic processors who know this scenario all too well. But, the time to argue, fuss and fight is over. As of 12:01 a.m. on June 9, 2007 the rules have changed. The final ruling on the Harvey case has been put into effect, requiring that any minor non-organic agricultural ingredients used in products labeled “organic” under the 95/5 rule (95 percent organic/5 percent or less non-organic) must now not only be proven commercially unavailable in organic but must also appear on section 205.606 of the National List.

At the March 2007 meeting, the National Organic Standards Board reviewed the first round of petitions to add materials to 205.606 and came up with a short list of items allowed*—but

The 205.606 List: Non-organically Produced Agricultural Products Allowed as Ingredients in or on Processed Products Labeled as “Organic.”*

According to the current NOSB recommendation, only the following nonorganically produced agricultural products may be used as ingredients in or on processed products labeled as “organic,” only in

accordance with any restrictions specified in this section, and only when the product is not commercially available in organic form.

Casings, from processed intestines

Celery powder

Chia (*Salvia hispanica*)

Dillweed oil

Fish oil, stabilized with organic ingredients or ingredients on the National List

Fructooligosaccharides

Galangal, frozen

Gelatin

Gums, water extracted only (Arabic, guar, locust bean and carob bean)

Hops

Inulin, oligofructose enriched

Kelp, for use only as a thickener and dietary supplement

Konjac flour

Lecithin, unbleached

Lemongrass, frozen

Orange shellac, unbleached

Pectin, high-methoxy

Peppers (chipotle chile)

Starches

this still means that hundreds of unlisted minor non-organic agricultural ingredients which have been used by many processors for years are now no longer allowed in products labeled “organic.” Although this may be better for organic in the long run by encouraging the development of more organic ingredients—this extra step is a hurdle that many processors were not prepared to jump.

As for the notion that this all came about suddenly, it may seem that it came to pass all too quickly, but it was certainly not sprung on the organic industry overnight. It has been nearly two and half years since the Harvey case was settled, and even through all the machinations and trips to court that ensued, this ruling remains unchanged, largely because the USDA agreed with it. Oh yes, there was much hand wringing and head scratching, but in the end, the organic industry was faced with one reality: either reformulate, replacing the non-organic agricultural ingredients with organic ones; petition to have any non-organic ingredients put on the National List in Section 205.606; or re-label processed products as “made with organic.”

The purists among us were clearly in favor of option one first and foremost. After all, using more organic ingredients means dedicating more land to organic agriculture. However, even the staunchest purist realizes that these are minor ingredients to begin with, not commodities like sugar and flour. To many manufacturers who make these ingredients, the demand for an organic version of each of these minor ingredients might not amount to a hill of beans, much less the motivation to get those beans certified.

The petitioning process has been the subject of many articles, hot debates and, for some, sleepless nights. Although the deadline and petitioning have been discussed at numerous meetings and in many newsletters and certifier emails in the past two years, it seems that many processors still did not understand the petitioning process or how important it was to encourage their non-organic suppliers to petition to have their ingredients included on 205.606.

Joe Smillie, senior vice president of the certification agency Quality Assurance International (and currently the Chair of the NOSB Compliance, Accreditation and Certification Committee and a member of the Handling Committee) has received several calls from certification clients who are all in a tizzy because they can no longer use anchovy paste in their certified organic salad dressings or pasta sauces. Anchovy paste is agricultural and, according to the new regulation, must be petitioned for. Of course, some might say that anchovies are aquatic, and that as such, they cannot be certified under the NOP because it lacks a standard for aquaculture. Still, in order to be used in a product labeled “organic,” all agricultural ingredients must be either certified organic or listed on 205.606. So much for organic Caesar salad!

But that doesn’t mean that there will never again be a USDA certified organic Caesar salad or that products that are pushed into the “made with organic” category are doomed. While many processors have already had to make the move to “made with organic,” the marketplace for this category is ever changing. There are short-term solutions to make the most out of the “made with” label, but we must also keep our eye on the long-term effects on individual businesses as well as on the organic industry as a whole. As more and more organic minor ingredients become available, products can continue to progress toward the

Cornstarch, native

Rice starch, unmodified, for use in organic handling until 2 years after effective date of final rule

Sweet potato starch, for bean thread production only

Turkish bay leaves

Wakame seaweed (*Undaria pinnatifida*)

Whey protein concentrate
Colors from agricultural products including:
Annatto extract, water and oil soluble

Beet juice

Beta-carotene, derived from carrots

Black currant juice

Black/purple carrot juice

Blueberry juice

Carrot juice

Cherry juice

Chokeberry (*Aronia* juice)

Elderberry juice

Grape juice

Grape skin extract

Paprika, dried and oil extracted

Pumpkin juice

Purple potato juice

USDA organic seal.

Right now, there are some very real options before us, many of which processors are already incorporating. Here are some of the directions processors can take as they enter into the new “made with organic” marketplace:

Short Term Solutions

State the percentage of organic ingredients. This can make for an extremely powerful statement on the principal display panel (PDP), especially since products that are coming from the USDA organic category already must be over 95 percent organic. The percentage statement must conform to the regulation as set forth in Section 205.304(a)(2), which reads: *“The size of the percentage statement must not exceed one-half the size of the largest type size on the panel on which the statement is displayed and must appear in its entirety in the same type size, style, and color without highlighting.”*

This can be easily dealt with by using very large type somewhere on the PDP and making sure that the percentage statement is not highlighted or greater than half that type size. The percentage statement itself tells a lot, not only about the product, but about the manufacturer’s commitment to using the maximum number of organic ingredients possible. The downside of this option—as with all products labeled as “made with organic”—is the prohibition against using the USDA seal. For better or worse, attractive or not, the seal has become recognized by consumers as an indication that a product contains at least 95 percent organic ingredients, and its sudden absence from a product package that once bore it could set the consumer to wonder.



Stating the percentage of organic ingredients can be an effective marketing tool.

According to Jake Lewin, certification services director of California Certified Organic Farmers (CCOF), “At CCOF we’ve seen a move to the ‘made with’ category. Many companies moving to the ‘made with’ category are now adopting percentage statements on their labels. Unfortunately, it can be quite painful for companies to downgrade their label, especially if they previously utilized the USDA seal. This is especially true because no matter how the organic manufacturing and certification community looks at the ‘made with’ label, it is the buying public who is critical to its acceptance. The percentage statement may help with this.”

This is exactly what brands like Peace Cereal (Golden Temple of Oregon) and Health Valley have done, and they have been very smart about it. In the same place where the USDA seal might once have been, or still is on products that qualify as organic, they have placed a round green “seal” with the organic percentage in it. A few of these seals actually have percentages as high as 98 (and some as low as 70). This could well tell the consumer that these are companies that want to send the message that they are using as many organic ingredients as they possibly can. Is this as powerful as the USDA seal itself? Stay tuned...

Red cabbage extract

Red radish extract

Saffron

Turmeric

Use your certifier's logo. While it is true that the USDA logo is not available to “made with organic” products, certifier logos are. Identification of the certifier is required on all retail packages, and most certifiers do have a logo. (Note: one may not use the logo instead of the certifier's name, but may use it in addition thereto). And there is even a bonus: when the USDA logo is used, no other logo on the label may be larger. If a certified handler cannot use the USDA logo anyway, the certifier will, no doubt, be more than happy to allow the use of a larger version of its logo. Soon, consumers may come to recognize certifier logos as well. “We wonder if the move to ‘made with’ labels will bring increasing prominence back to certifier seals,” said Lewin.

Redesign your packaging. If processors have to come up with new packaging and/or labeling anyway, it may as well be something that really pops. Check out the competition; see what they've been doing—possibly even from the inception of their own organic lines—in this same category. You may be surprised to see that many companies have been taking full advantage of the fact that they do not have to be 95 percent organic to market the “O” word on their packaging. In addition, one certifier has stated that the “made with” statement on certain vitamin-fortified cereals, for example, was a much more honest label. It is clearer to the consumer, he said, to say that a cereal containing synthetic vitamins (allowed) is made with organic rice, wheat and sugar, than to say that the whole cereal is organic.

Train your customer service staff. Manufacturers should be prepared for calls asking why packaging has been changed. Was the product changed? What's the deal? Processors should not expect their customers to know about the Harvey ruling or any of its repercussions. They should simply tell them that a new regulation went into effect on June 9, and that industry-wide many manufacturers had to change their labels. Customers should be assured that the same fine ingredients are being used and that the products still contain the same percentage of organic ingredients that they did before. Offer them a coupon. Tell them about your other wonderful products. Make lemonade—just make sure it's organic lemonade!

Long Term Solutions

Petition! It is never too late to petition to have agricultural ingredients included on Section 205.606 of the National List. Processors should urge their suppliers to file the petitions since they know the most about the product itself. Plus they will benefit from the sales to many organic processors who use the minor ingredient they offer. Processors may want to offer public comment at the NOSB meeting when the petition is discussed in order to show their support and communicate why the ingredient is needed.

Creating the petition is not particularly difficult if one follows the guidelines which can be found on the NOP website at http://www.ams.usda.gov/nop/Newsroom/FedReg01_18_07NationalList.pdf.

Make sure to note that a separate petition must be filed for each material—group petitions such as “spices and herbs” will not be accepted. The petition must also be for an agricultural material that could eventually be available organically. In addition, the petitioner is responsible for showing that there are challenges with the global supply for the particular material, including whether that supply is vulnerable to shortages due to issues such as

catastrophic weather events, sporadic disease or pest issues, etc. Likewise, if the organic form is not functional for the manufacturer's use, this must be clearly explained in the petition. Supporting evidence of these challenges is needed to authenticate the petition.

Andrea Caroe, chairperson of the NOSB, wants to remind processors, ingredient manufacturers and consumers alike that listing items on 606 is only a safeguard for ingredients that are very difficult to source, and not a loophole for processors to be able to use non-organic ingredients. As soon as an organic supply of a listed ingredient is available, it must be used.

"This means that ingredient manufacturers should really be watching the list. Before ingredients that were in short supply were somewhat hidden in certification paperwork, but the 606 list is like a giant headline that says 'this is what we need,'" she said. "This list should encourage suppliers to step up and make these ingredients."

Which brings us to the next point.

Urge your suppliers to obtain USDA organic certification or to create new organic ingredients. This option furthers the industry's ultimate goal—to dedicate as much land to organic agriculture as possible. It also spurs on new growth, making more organic ingredients available to everyone in the market and supporting ingredient companies that are willing to take the risk to enter the organic market.

"Looking back at the history of organic, many of the ingredients that we have now were created because one company pushed for it," said Grace Marroquin, owner of Marroquin International Organic Commodity Services.

This was the case with organic powdered sugar. Someone approached Marroquin looking for this ingredient to use in their organic sandwich cookie and she went to work to find someone who could make it.

"Now this commodity is available to many processors, and consumers can even buy it retail," she said. "That is the beauty of this industry. Someone makes a commitment and we end up with new ingredients and new products that help grow the organic movement."

Stonyfield Farm has worked with several suppliers to encourage them to create certified organic versions of many key ingredients including beet juice, elderberry juice and coffee flavor—just to name a few. For beet juice, which they use as a color in many of their products, they approached a European manufacturer and worked with them to gain USDA certification.

"We have to develop many of our ingredients this way. It's about creating a demand and as a larger company we have the buying power to do this," said Nancy Hirshfield, vice



Stonyfield worked with suppliers to get organic beet juice to color their berry products.

president of natural resources at Stonyfield Farm.

“Larger companies like us have helped bring many ingredients to the U.S. marketplace and make these ingredients available to many other smaller companies who might not have been able to create a big enough demand on their own.”

Smaller companies can also band together to create a larger demand for a common product that they all need. Or sometimes just the fact that a supplier has heard the requests from many individual companies may be enough to prove to them that there is a widespread industry demand and encourage them to create a USDA certified product.

No matter if you are big or small, the key is to first create the demand and then follow it up with commitment. By giving an honest projection of the supply that you will need, and committing to buy that supply once it is available, processors can build relationships that will help them source the ingredients they need.

The “Made With Organic” Choice: Integrity Versus Cost Management

The “made with organic” category has been much maligned as “organic lite,” “wannabe organic,” and other less than flattering terms. It is clear that manufacturers of products labeled “organic” and certifiers see the forced change to a “made with organic” label as a downgrade, however, it is not at all clear that the average consumer even knows the difference. While it is true that the USDA seal cannot be used on a “made with organic” product, it may be the case that they look for the “O” word first. Perhaps the bigger question will be whether manufacturers want to switch back to an organic label once the minor ingredients they require are on 205.606 or available in organic.

It would be naïve to think that this change is going to be cost free. Besides the obvious costs—new labeling/packaging, promotional materials, R&D, petitions, new certifications—this could potentially have long term effects on the organic industry as a whole.

The truth is the category, as defined in 7CFR 205.301(c), lacks a commercial availability clause, which means, in short, that once the 70 percent threshold is attained, one need not use any more organic ingredients, even if those ingredients are commercially available as organic. This notion alone sets the U.S. NOP’s “made with” category apart from similar categories under other standards, such as Europe’s EEC 2092/91 and IFOAM. Those standards require the ingredients in a certified product—irrespective of the final percentage—to be organic when commercially available.

From the NOP’s implementation, and even before, many of the organic movement’s staunchest supporters fought to have the “made with organic” category strengthened by adding a commercial availability clause.

When the Harvey decision was handed down in January 2005, many of those same people saw it as an opportunity to revisit 205.301(c), for fear that it would become a catch-all for products that just barely made it to the certification level of 70 percent. We were told that the category was designed to allow manufacturers to enter the organic arena, in the hope that they would eventually build the organic percentages of their products to 95 percent and recertify them as “organic.” Presumably, the USDA seal would act as the proverbial carrot.

Now, with the implementation of the new regulation on 205.606, the “made with” category could, indeed, become that catch-all. If a manufacturer is forced into the “made with organic” category (and consequently not allowed to use the USDA seal) by virtue of the 5 percent non-organic ingredients in its products not being on the National List, there is nothing to force that manufacturer to continue using the other 25 percent organic ingredients. Those “extra” 25 percent or so could be seen as an unnecessary cost. This line of thinking is exactly what pioneers of the organic movement have feared.

“I am completely committed to promoting organic agriculture and products and we always encourage processors to go for as many organic ingredients as possible. People ask me all the time for organic ingredients, and they’re pleasantly surprised when I come through. It may take time, but I usually find the ingredients,” said Marroquin, whose company, Marroquin International Organic Commodity Services, has helped develop organic minor ingredients since the early ‘90s.

“We just need to make everyone understand that organic agriculture is crucial to the health of the planet and future generations,” she said. “It is our legacy.”

There are no statistics on the change of products from the “made with” category to “organic” (although there will no doubt be statistics showing the reverse trend), and larger manufacturers tend to keep mum about such things.

One observer notes that there seem to be two schools of thought: the school of “let’s make it as organic as we possibly can” and the school of “let’s get into the organic marketplace however we can.” Both are valid, certainly, but only one has the interest of increasing and sustaining organic agriculture at heart. That premise of sustainability is fundamental to organic agriculture and to the entire organic movement.

One of the fastest growing sectors of the organic industry is that of personal care. Body oils, lotions, lip balms, scrubs and even perfumes are being legitimately certified as organic, because they are comprised of 95 percent NOP certified materials and are manufactured via allowed practices. This burgeoning sector is supported by many large—even global—firms. These firms know how to do their homework, to say the least. They have researched the “made with organic” category, and they are not particularly interested in it. They understand the market appeal of the seal and want to bring their customers something that was thought to be impossible: fully organic personal care products.

One ingredient category upon which the personal care industry relies heavily is essential oils. Very few of these are actually produced in the United States, but many have become available as NOP certified. These are used not only for the fragrant qualities; many are used for their function as well. Therefore, they cannot be considered “natural flavors” straight across the board, and in certain cases, must actually be called out on an ingredient declaration. What will happen when these ingredients become temporarily unavailable as organic, due to a crop failure? If they are not listed on 606, the manufacturers will be forced to re-label products as “made with organic.”

“It is far more likely that they will discontinue their organic lines and just make the products conventionally,” said Stephen Pisano, vice president of Citrus and Allied Essences, Ltd.

“Why bother?”

Why bother? A valid question, indeed, but there is an equally valid answer. The new ruling on 205.606 is not a deal-breaker. Well conceived or not, it was not designed to stop the organic industry in its tracks. On the contrary, it was meant to strengthen the organic regulations and, ultimately, to make the organic industry more accountable. It was designed to entice—even oblige—producers and ingredient manufacturers to certify their crops and their products. It was designed to oblige overseas producers and manufacturers to obtain NOP certification. It was designed to make the industry more, not less, organic. The choice is up to manufacturers as to whether to subscribe to the “as organic as possible” school, or the “just be in the organic market” school. And, if the “made with” category becomes stronger by virtue of the number of products that contain 95 percent organic ingredients (or higher), then we all win.

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***Note from the editor:**

At press time, the USDA published an interim final rule, effective June 21, 2007, allowing NOSB recommended ingredients to continue to be used in products labeled “organic.” This rule includes a 60-day comment period, after which the USDA will post the final rule. For the current status of this issue talk to your certifier or visit www.ams.usda.gov/NOP.

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