



BEYOND PESTICIDES

701 E Street, SE ■ Washington DC 20003
202-543-5450 phone ■ 202-543-4791 fax
info@beyondpesticides.org ■ www.beyondpesticides.org

March 18, 2013

National Organic Standards Board
Spring 2013 Meeting
Portland, OR

Re. CACS: Calculating percent organic

These comments are submitted on behalf of Beyond Pesticides. Beyond Pesticides, founded in 1981 as a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to bridge the interests of consumers, farmers and farmworkers, advances improved protections from pesticides and alternative pest management strategies that reduce or eliminate a reliance on pesticides. Our membership and network span the 50 states and groups around the world.

While we support, in general, the proposal of the CACS, we have some concerns with the assumption that “100% organic” can be achieved from the contribution of ‘single-ingredient’ ingredients and raw agricultural ingredients labeled as “organic.”

There are two areas of the methodology that need to be addressed to meet the standards of the law:

1. The Organic Foods Production Act (OFPA) does not distinguish between processing aids and ingredients, as does this method.
2. The method can lead to 100% organic products that are composed of organic ingredients, none of which is 100% organic.

1. OFPA does not distinguish between processing aids and ingredients.

This issue is addressed by the Handling Subcommittee in its proposal on “other ingredients.” Under “Relevant Areas in OFPA and Regulations,” the document states,

OFPA prohibits a certified handler from adding “any synthetic ***ingredient*** not appearing on the National List during processing or any postharvest handling.” The National List heading in the regulations at §205.605 and §205.606 also specify the use of non-agricultural substances and agricultural products, respectively, referred to as ‘***ingredients.***’ While OFPA does not reference processing aids, the regulations under §205.301(f)(4) prohibit the use of ‘***processing aids***’ during the handling of an organic product unless they are approved on the National List. Both terms are included under 205.2 (Terms Defined). Furthermore, in the final ruling on the Harvey

II case (Nov. 2, 2006, the District Court of Maine¹) the Courts determined that Congress did not distinguish between the general term “ingredients” and “processing aids,” and authorized the use of synthetic substances, whether ingredients or processing aids, for the use in handling operations so long as they appear on the National List (Memorandum Decision on Motion to Enforce Judgment and Cross Motion for Relief from Judgment, U.S. District Court, District of Maine, Civil Docket 2:02cv216). [Emphasis in original.]

Are “ingredients” and “processing aids” distinguishable under OFPA? Apparently, the courts think not.

Furthermore, the definition of “processing aid” in §205.2² depends explicitly and implicitly on the substance being “present in the finished food in insignificant levels and does not have any technical or functional effect on that food.” The Board does not have definitions for “insignificant” or “technical or functional effect.” Thus, unless there is some sort of analysis, a default non-zero level of residue must be assumed. This assumed level may be very small for single-ingredient ingredients.

2. The method can lead to 100% organic products that are composed of organic ingredients, none of which is 100% organic.

We understand that the proposal is focused on a uniform methodology for calculating a percentage, and not about the label “100% organic.” However, the two issues are ultimately related, since once a calculation results in 100%, the product can be labeled “100% organic.” Since raw agricultural ingredients and other single ingredients may, under the proposed scheme, be assumed to be 100% organic for the purpose of calculating the percentage organic in the final product, this may lead to an anomalous situation in which the product is calculated to be 100% organic, but none of the ingredients are actually 100% organic. Although the proposal distinguishes the organic label from the organic content for the purposes of calculation, it still would label a product “100 % organic” based on assumptions concerning “insignificant” residues of non-organic processing aids.

Prior to NOP implementation, the organic industry did not use a “100% organic” label and, to date, the label is not widely used in the marketplace, largely due to the requirement that all processing aids in a “100% product” must be from organic sources. We did not favor the establishment of the 100%

¹OFPA does not refer to ‘processing aids.’ However, in the final ruling on the Harvey II case Nov. 2, 2006, the District Court of Maine ruled that the OFPA change of 2005 that allowed synthetic “ingredients” also allowed synthetic “processing aids” as long as they appear on the National List. The Court determined that Congress did not distinguish between the general term “ingredients” and “processing aids,” and authorized the use of synthetic substances, whether ingredients or processing aids, for the use in handling operations so long as they appear on the National List (Memorandum Decision on Motion to Enforce Judgment and Cross Motion for Relief from Judgment, U.S. District Court, District of Maine, Civil Docket 2:02cv216). [Footnote in recommendation document.]

² **205.2. Terms Defined. Processing aid.**

- (1) Substance that is added to a food during the processing of such food but is removed in some manner from the food before it is packaged in its finished form;
- (2) a substance that is added to a food during processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; and
- (3) a substance that is added to a food for its technical or functional effect in the processing but is present in the finished food at insignificant levels and does not have any technical or functional effect in that food.

organic label because of a concern that it would create upward pressure to utilize a label that does not reflect ingredient impurities (synthetic ingredients), thus misleading consumers.

Proposed solution.

The most straightforward approach to this problem of synthetic ingredients (including processing aids) in processed product is a uniform assumption that it is in the finished product unless it can be proven otherwise. If there is no analysis or certification of actual 100% ingredients, **a default non-zero level of residue must be assumed.** (Zero is a very special number, and we need to be careful with it, especially in food labeled 100% organic.) In the case of raw agricultural commodities and other single-ingredient ingredients, the assumed value may be very small—0.01%, for example. This is consistent with the assumption of 95% organic ingredients for multi-ingredient ingredients labeled “organic,” but lacking documentation of higher organic content.

We urge the Board to proceed with creating uniformity, but at the same time ensuring that the 100% organic calculation captures all synthetic residue “presence” so that the 100% label claim retains public trust.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Shistar". The signature is fluid and cursive, with a long horizontal stroke at the end.

Terry Shistar
Board of Directors