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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS-NOP-16-0085; NOP-16-06]

National Organic Program: Notice of Draft Guidance for Calculating the Percentage of Organic Ingredients in Multi-Ingredient Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of availability of draft guidance with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing the availability of a draft guidance document intended for use by accredited certifying agents and certified handling operations. The draft guidance document is entitled as follows: Calculating Percentage Organic in Multi-Ingredient Products (NOP 5037). This draft guidance document is intended to inform the public of AMS' current thinking on this topic. AMS invites organic producers, handlers, certifying agents, material evaluation programs, consumers and other interested parties to submit comments.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit written requests for hard copies of this draft guidance to Paul I. Lewis, Ph.D., Standards Division Director, National Organic Program (NOP), USDA-AMS-NOP, 1400 Independence Ave. SW, Room 2646—So., Ag Stop 0268, Washington, DC 20250-0268. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

You may submit comments on this draft guidance document by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Paul I. Lewis, Ph.D., Standards Division Director, National Organic Program, USDA-AMS-NOP, 1400 Independence Ave., SW., Room 2646—So., Ag Stop 0268, Washington, DC 20250-0268.

Instructions: Written comments responding to this request should be identified with the document number AMS-NOP-XX-XXXX; NOP-16-06. You should clearly indicate your position and the reasons supporting your position. If you are suggesting changes to the draft guidance document, you should include recommended language changes, as appropriate, along with any relevant supporting documentation. AMS is specifically requesting that stakeholders comment and quantify any impacts that the guidance will have on certified operations. AMS is also requesting comments from accredited certifying agents on the policy related to the calculation of multi-ingredient ingredients. How is the industry currently calculating organic products that use organic ingredients that contain several ingredients? What are the sound and sensible approaches currently being used?

USDA intends to make available all comments, including names and addresses when provided, regardless of submission procedure used, on www.regulations.gov and at USDA, AMS, NOP, Room 2646-South building, 1400 Independence Ave., SW, Washington, D.C., from 9 a.m. to noon and from 1 to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South building to view comments from the public to this notice are requested to make an appointment by calling (202) 720-3252.

FOR FURTHER INFORMATION CONTACT: Paul I. Lewis, Ph.D., Standards Division Director, National Organic Program (NOP), USDA-AMS-NOP, 1400 Independence Ave. SW,

Room 2646—So., Ag Stop 0268, Washington, DC 20250-0268; Telephone: (202) 720-3252; Fax: (202) 260-9151; Email: NOP.Guidance@ams.usda.gov; or visit the NOP Web site at: www.ams.usda.gov/nop.

SUPPLEMENTARY INFORMATION:

I. Background

The draft guidance document announced through this notice was developed to respond to an April 2013 National Organic Standards Board (NOSB) request that the National Organic Program (NOP) correct and/or clarify the requirements codified at 7 CFR § 205.302(a), calculating the percentage of organically produced ingredients. Section 205.302(a)(1) states the method of calculation as “[d]ividing the total net weight (excluding water and salt) of combined organic ingredients at formulation by the total weight (excluding water and salt) of the finished product.” Current interpretation of 205.302(a)(1) is to “[d]ivid[e] the total net weight (excluding water and salt) of combined *organic ingredients* at formulation by the total weight (excluding water and salt) of *all ingredients*.” [Emphasis added.]

The NOSB recommendation asked the NOP to: 1) Correct the regulatory language at §205.302(a) to clarify that organic percentages should be calculated by dividing the total net weight (excluding water and salt) of combined organic ingredients at formulation by the total net weight (excluding water and salt) of all ingredients. The NOSB asked that the NOP clarify that the percentage of organic ingredients in a product should be calculated based on the net weight of “all ingredients” in that product, and not the net weight of the “finished product” because most products lose weight during processing; 2) Clarify how to calculate the organic percentages of a multi-ingredient product that contains ingredients that are themselves composed of more than one ingredient; 3) Clarify when to exclude salt and water from ingredients; 4) Provide guidance on

how to calculate raw agricultural product and processed single ingredient ingredients; and to 5) Develop and publish example self-calculating forms on items related to the organic percentage of each ingredient and the exclusion of salt and water. This guidance addresses the NOSB recommendation.

The draft guidance is available from AMS on its website at <http://www.ams.usda.gov/rules-regulations/organic/draft-guidance>. If finalized, any final guidance would be available in “The Program Handbook: Guidance and Instructions for Accredited Certifying Agents (ACAs) and Certified Operations”. This Handbook provides those who own, manage, or certify organic operations with guidance and instructions that can assist them in complying with the USDA organic regulations. The current edition of the Program Handbook is available online at <http://www.ams.usda.gov/rules-regulations/organic/handbook>.

II. Significance of Guidance

This draft guidance document is being issued in accordance with the Office of Management and Budget (OMB) Bulletin on Agency Good Guidance Practices (GGPs) (January 25, 2007, 72 FR 3432-3440).

The purpose of GGPs is to ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements. The draft guidance, when finalized, will represent AMS’ current thinking on these topics. It does not create or confer any rights for, or on, any person and does not operate to bind AMS or the public. Guidance documents are intended to provide a uniform method for operations to comply that can reduce the burden of developing their own methods and simplify audits and inspections. Alternative approaches that can demonstrate compliance with the Organic Foods Production Act (OFPA), as amended (7 U.S.C. 6501-6522), and its implementing

regulations are also acceptable. AMS strongly encourages industry to discuss alternative approaches with the NOP before implementing them to avoid unnecessary or wasteful expenditures of resources and to ensure the proposed alternative approach complies with the Act and its implementing regulations.

III. Electronic Access

Persons with access to Internet may obtain the draft guidance at either AMS' website at <http://www.ams.usda.gov/nop> or <http://www.regulations.gov>. Requests for hard copies of the draft guidance documents can be obtained by submitting a written request to the person listed in the ADDRESSES section of this Notice.

Authority: 7 U.S.C. 6501-6522.

Dated: November 30, 2016

Elanor Starmer
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Agricultural Marketing Service

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