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January 15, 2004

**BY HAND**

Mr. Richard H. Mathews  
Program Manager  
National Organic Program  
USDA-AMS-TMP-NOP  
Room 4008 South Building  
1400 Independence Avenue SW  
Washington, DC 200250-0200

Re: Request to National Organic Program  
To Issue Guidance for Products Labeled "Organic,"  
Directing That When Organic Ingredients Are Available,  
They Must Be Used Instead of Nonorganic Substitutes

Dear Mr. Mathews:

I am writing to you on behalf of 14 firms in 10 States throughout the United States that supply organic ingredients to food and livestock feed manufacturers.<sup>1</sup>

These firms jointly and urgently request that the National Organic Program (NOP) issue guidance as soon as possible to direct that products labeled as "organic" use organically produced ingredients whenever they are available instead of nonorganic versions of those ingredients.

We propose that this guidance be in the form of Questions and Answers on the NOP website. With this letter you will find an attached document with the text of three proposed Questions and Answers for this purpose. You will also find attached a Decision Tree outline containing full details

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<sup>1</sup> The 14 firms joining in this request are Beta Pure Foods, Aptos, CA; Ciranda, Inc., Hudson, WI; Clarkson Grain, Cerro Gordo, IL; ForesTrade, Inc., Brattleboro, VT; Frontier Natural Products Cooperative, Norway, IA; Global Organics, Ltd., Arlington, MA; Maine Coast Sea Vegetables Inc., Franklin, ME; Marroquin International Organic Commodity Services, Inc., Santa Cruz, CA; Midwestern Bio-Ag Products & Services, Inc., Blue Mounds, WI; Ojai Organics, Ojai, CA; Organic Ingredients, Inc., Aptos, CA; Thorvin, Inc., New Castle, VA; Tradin Organics USA, Inc., Amherst, NH, and Wholesome Sweeteners, Inc., Sugar Land, TX.

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in support of the request. The Decision Tree outline follows the format of "Decision Making Procedures for the National Organic Program" (May 9, 2003).

Before you turn to the Decision Tree outline and the three proposed Questions and Answers, I would like to present in this letter a brief introduction to the problem and the solution we are proposing.

#### Why the NOP Should Act to Strengthen Practice of "Organic Preference"

The Final Rule, as you know, already requires that products labeled "organic" must use organically produced ingredients when they are available. However, these firms find it necessary to make this request for additional guidance because in numerous instances accredited certifying agents and ingredient users have not been complying with this requirement. In too many cases, nonorganic ingredients are turning up in products that should be using available organic versions instead. These firms speak from first hand experience, as they have encountered resistance in attempting to market their new organically produced ingredients.

The firms making this request represent the cutting edge of the organic ingredient sector. They have been bringing to market a number of ingredients for human foods and animal feeds that have not previously been "commercially available" as organic. Examples of this are organic yeast, lecithin, molasses, spices, kelp, colors, antioxidants and vitamins. These new organic ingredients are the result of years of development and millions of dollars of investment on the part of growers and handlers.

These firms have contracted for organic crops to be produced and have made other substantial business commitments based on the letter and spirit of the National Organic Program, which was designed to encourage the use of more and more organic ingredients once they are "commercially available." They have relied specifically on the "organic preference" rule that applies to all products labeled as "organic." As you know, Section 205.301(f)(6) of the Final Rule requires that if a product is labeled as "organic," it must not "be produced using nonorganic ingredients when organic ingredients are available." The Final Rule and the Preamble are replete with other provisions as well that require the use of organic ingredients in all cases where they are "commercially available."<sup>2</sup>

At the heart of the rationale for "organic preference" is the assurance to the consumer that organic products will contain as many organic ingredients as possible. As the Preamble to the Final Rule explains, at page 80563:

We agree with commenters that a preference for organically produced agricultural commodities, when commercially available, can benefit organic producers, handlers and consumers in a variety of ways. We believe that the

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<sup>2</sup> See Sections 205.270(b)(1) and 205.301(b), and Preamble, p. 80562-3, and p. 80587 (*Labeling of Products with Minor Ingredients*).

commercial availability requirement may allow consumers to have confidence that processed products labeled as 'organic' contain the highest feasible percentage of organic ingredients. Some producers may benefit from any market incentive to supply organically produced minor ingredients that handlers need for their processed products.... For these reasons, we have amended the final rule to require that an agricultural commodity used as an ingredient in a raw or processed product labeled as organic must be organic when the ingredient is commercially available in an organic form.

Thus, any falling off in the use of organically produced ingredients in products labeled as "organic" is a serious challenge to the aims of the NOP Final Rule. The Final Rule has encouraged consumers to trust the "USDA Organic" seal as representing that the product contains all available organic ingredients. The substitution of nonorganic for organic ingredients threatens to erode this trust. Already it has had a serious impact for firms that specialize in supplying organic ingredients and on organic crop producers that provide raw materials for these ingredients.

The Reasons Why Certifiers and Ingredient Users  
Have Not Fully Complied with "Organic Preference" and  
How NOP Guidance Can Help to Correct the Situation

The organic ingredient firms joining in this request have identified three reasons why accredited certifying agents and organic ingredient users have not been fully implementing "organic preference."

1. Due to the complexity of the provisions in the Final Rule that relate to "organic preference," the Organic Materials Review Institute (OMRI) has found specific instances in which it has claimed that the general policy of "organic preference" does not technically apply. In the attached Decision Tree, we will explain how these interpretations by OMRI have been in error. Nevertheless, certifying agents and manufacturers have been relying on these interpretations from OMRI as a basis for not requiring "organic preference" for specific ingredients. **In light of these misinterpretations, it is important for the NOP to dispel this confusion by issuing guidance to clarify the intent of the Final Rule and thus override OMRI's erroneous positions that have been undermining "organic preference."**

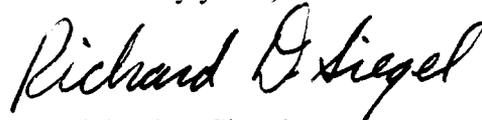
2. Even for ingredients for which OMRI has not set forth any exceptions, it appears that some certifying agents have not been insisting on full "organic preference" for ingredients used by their clients. Reportedly there are some certifiers that fear that being too strict about ingredients would be "bad for business," since it could drive away clients to some other certifiers that would be more lenient. **If the NOP issues guidance that calls for conscientious enforcement of the "organic preference" rule by certifiers, this will focus attention on this area of certification and will remind all certifiers of their obligation to require their clients to comply with "organic preference."**

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3. Finally, the firms joining in this letter acknowledge that when accredited certifying agents are willing to recommend organic ingredients to their clients, they are often simply not aware of all the available organically produced ingredients. There is a vital need for a central Internet website as a source of information on which ingredients are or are not "commercially available." We understand that the NOP has already considered setting up a website, and that both the Organic Trade Association (OTA) and OMRI have discussed it as well. The firms that are joining in this letter intend to take an active role, primarily through the OTA, in advocating such a website.

In conclusion, I hope that this letter and its two attached documents will prove helpful to you and your staff in responding to this request for NOP guidance on "organic preference." Please let me know if you have any questions. I look forward to hearing from you.

Sincerely yours,



Richard D. Siegel  
Counsel for:

Beta Pure Foods  
Ciranda, Inc.  
Clarkson Grain  
ForesTrade, Inc.  
Frontier Natural Products Cooperative  
Global Organics, Ltd.  
Maine Coast Sea Vegetables Inc.  
Marroquin International Organic Commodity  
Services Inc.

Midwestern Bio-Ag Products & Services, Inc.  
Ojai Organics  
Organic Ingredients, Inc.,  
Thorvin, Inc.  
Tradin Organics USA, Inc.  
Wholesome Sweeteners, Inc.

RDS:la

Attachments

cc: Barbara Robinson  
Keith Jones  
Phil Margolis  
Katherine DiMatteo  
Honorable Patrick J. Leahy  
Mary Mulry  
Laura Morrison

**REQUEST TO NATIONAL ORGANIC PROGRAM,  
AGRICULTURAL MARKETING SERVICE, USDA  
TO ISSUE GUIDANCE FOR PRODUCTS LABELED "ORGANIC,"  
DIRECTING THAT WHEN ORGANIC INGREDIENTS ARE AVAILABLE,  
THEY MUST BE USED INSTEAD OF NONORGANIC SUBSTITUTES**

**SUBMITTED BY RICHARD D. SIEGEL, ATTORNEY AT LAW  
JANUARY 15, 2004**

**ON BEHALF OF:  
BETA PURE FOODS, APTOS, CA  
CLARKSON GRAIN, CERRO GORDO, IL  
CIRANDA, INC., HUDSON, WI  
FORESTRADE, INC., BRATTLEBORO, VT  
FRONTIER NATURAL PRODUCTS COOPERATIVE, NORWAY, IA  
GLOBAL ORGANICS, LTD., ARLINGTON, MA  
MAINE COAST SEA VEGETABLES INC., FRANKLIN, ME  
MARROQUIN INTERNATIONAL ORGANIC COMMODITY SERVICES, INC.,  
SANTA CRUZ, CA  
MIDWESTERN BIO-AG PRODUCTS AND SERVICES, INC.,  
BLUE MOUNDS, WI  
OJAI ORGANICS, OJAI, CA  
ORGANIC INGREDIENTS, INC., APTOS, CA  
THORVIN, INC., NEW CASTLE, VA  
TRADIN ORGANICS USA, INC., AMHERST, NH  
WHOLESOME SWEETENERS, INC., SUGAR LAND, TX**

**This Decision Tree Outline Follows "Decision Making Procedures for The National  
Organic Program," May 9, 2003**

## **1. Define the Problem.**

### **a) What is the problem?**

While the National Organic Program (NOP) Final Rule requires that products labeled as “organic” must use organic rather than nonorganic ingredients when organic ingredients are “available,” accredited certifying agents are not uniformly requiring companies to comply with this “organic preference” requirement. This has been responsible for considerable losses of sales of “commercially available” organic ingredients. When certifying agents do not honor “organic preference” and thus permit manufacturers to use conventional ingredients that are less expensive than organic ingredients, then producers that grow organic crops for the ingredient market and firms that distribute organic ingredients will both be under an unfair disadvantage in the marketplace. This situation threatens to undermine the incentive to develop new organic ingredients. When such ingredients are not available, manufacturers of necessity will need to turn to non-organic substitutes. This will dilute the high standard for “organic” products that the National Organic Program Final Rule has been designed to foster.

### **b) Identify Where We Are Now.**

Food manufacturers are using nonorganic ingredients, such as spices, extracts and yeast, in products labeled “organic,” instead of following the NOP Final Rule and using organic forms of these ingredients that are commercially available. Feed manufacturers are using nonorganic kelp, yeast and molasses in feed labeled “organic” even though the Final Rule requires the use of organic kelp, yeast and molasses, since it is likewise commercially available.

### **c) Identify Where We Want to Be**

The objective should be to have accredited certifying agents uniformly and strictly enforce the requirement, under § 205.301(f)(6) and §205.270(b)(1) of the NOP Final Rule, that whenever a product is labeled “organic,” it must contain organic ingredients, when “available,” instead of nonorganic ingredients. Then situations such as those cited in 1(b) above would not occur.

## 2. Analyze the Problem

### a) Why Is There a Problem?

1. The complexity of some provisions of the Final Rule has caused confusion among certifiers and ingredient users.

- In the National List, § 205.606 lists a small number of nonorganic agricultural products that are permitted in products labeled “organic” or “made with organic...” as long as the product is not commercially available in organic form. § 205.605, the section of the National List that allows nonorganic nonagricultural products (including yeast), does not specifically reiterate the provision to use organic ingredients if commercially available. This has been a source of confusion.
- The lack of an “organic preference” provision in § 205.605 has led OMRI to conclude that even if organic yeast is available, there is no “organic preference” for yeast or any other nonagricultural product listed under § 205.605. This is an error. § 205.270(b)(1) requires “organic preference” when nonagricultural products listed under § 205.605 are commercially available in organic form. In addition, § 205.301(f)(6) requires “organic preference” in products labeled “organic” whenever organic ingredients are “available.”
- The complex content requirements for “organic” livestock feed in the Final Rule have also been open to misinterpretation. OMRI has concluded that because “organic” livestock feed may contain nonorganic additives and supplements above the normal 5 percent maximum, feed manufacturers are not required to use commercially available organic additives and supplements. However, if the feed is labeled “organic,” it is still subject to the “organic preference” rule under § 205.301(f)(6), that requires organic ingredients if available.

2. In cases where certifiers clearly understand “organic preference” and know that organic ingredients are commercially available, it appears that some certifying agents have still not been insisting on full “organic preference” for ingredients used by their clients. Reportedly there are some certifiers that fear that being too strict about ingredients would be “bad for business,” since it could drive away clients to some other certifiers that would be more lenient.

3. Sometimes certifiers and ingredient users are not always familiar with new organic ingredients coming on the market. Organic yeast, now readily available, is a prime example. In November 1995, when the NOSB recommended nonorganic yeast be permitted on the National List, organic yeast did not exist on the market and yeast was known only as a nonagricultural product. Now that the situation has changed, with organic yeast available, certifiers and ingredient users have been slow to adopt it.

**b) Is the Evidence of the Problem Supported by Credible and Compelling Facts or Data? What Are the Facts or Data Used to Draw an Affirmative Conclusion?**

Following are examples that identify the nature and extent of the problem:

- Organic yeast is now commercially available as an import from Europe. An importer, relying on the “organic preference” requirement in the Final Rule, expected to find demand for this new organic ingredient. In 2002 the importer brought a full container to the United States in anticipation of the full implementation of the Final Rule. However, the importer was only able to sell a small fraction of the shipment. Although organic yeast was a new product, the main reason for its lack of acceptance was confusion over its regulatory status. The National List permits nonorganic yeast under § 205.605(a). OMRI’s most current Generic Materials List, dated April 21, 2002, interprets this as a blanket approval of nonorganic yeast. This OMRI interpretation has not taken account of the “organic preference” rule. Thus this has discouraged buyers from purchasing organic yeast.
- Organic kelp, yeast and molasses are commercially available for use in livestock feed as ingredients, additives and supplements. Special provisions in the Final Rule permit livestock feed labeled as “organic” to contain nonorganic feed additives and supplements, under §§ 205.237(a) and 205.301(e)(2). Furthermore, these nonorganic additives and supplements may exceed 5% of the ingredients. (See Preamble to Final Rule, 65 Fed.Reg. 80580.) In this instance OMRI’s interpretation has discouraged the use of organic kelp, yeast and molasses in livestock feed. Many certifiers are relying on interpretations from OMRI. OMRI’s most current Generic Materials List dated April 21, 2002, does not acknowledge that the “organic preference” rule applies. It indicates simply that nonorganic kelp and yeast are allowed as additives and supplements. This has discouraged the use of organically produced additives and supplements in “organic” livestock feed. In some cases, farmers and formulators are actually switching to non-organic sources of kelp, molasses and yeast in preference to organic sources.
- A U.S. organic feed ingredients company has developed a new feed grade certified organic yeast protein grown on organic wheat and formulated with organic molasses. Certifiers, referring to the OMRI Generic Materials List cited above, will not require the use of this organic yeast, so despite the requirement in the Final Rule for “organic preference,” the company is unable to sell this new feed ingredient product to feed manufacturers for use in their “organic” livestock feed.
- Organic spices and extracts, formerly in short supply, are now “commercially available,” yet it is routine for certifiers to allow “organic” products to be made with conventional spices and extracts instead. This is an instance in which the organic ingredients are available and well known in the trade. There is no OMRI position in conflict with the “organic preference” rule. This is simply a case of certifiers not strictly enforcing the “organic

preference” rule, apparently as an accommodation to their clients, even though this undermines the aim of the Final Rule.

**c) Whom Does This Problem Affect?**

- It affects consumers, since they trust and expect that the USDA Organic label assures them that the product contains or was grown using every available organic ingredient. When opportunities to develop organic ingredients are lost, “organic” finished products will contain more nonorganic ingredients and fewer organic ingredients. If this problem addressed soon, it will erode the public’s confidence in the National Organic Program.
- It directly affects all firms engaged in supplying organic ingredients, growers as well as handlers.
- It affects those manufacturers that are careful to use organically produced ingredients in their products labeled “organic,” when other manufacturers are able to make competing “organic” products with the same ingredients without using the organically produced versions. This means the competitors have an unfair cost advantage in the marketplace.
- It affects OMRI and accredited certifying agents, because OMRI has given certifiers advice that has led to incorrect decisions in certification. This has led ingredient supply firms to lose confidence in OMRI and in these certifiers.

**d) What Is the Problem’s Effect?**

In the short run, suppliers of organic ingredients will lose potential sales. This has already occurred. For example, the importer who could not sell the container of organic yeast experienced a financial loss of over \$40,000 on the transaction. This has been a discouraging signal to other suppliers, making them far more cautious before introducing new organic ingredients. As time goes on, this problem will have a “snowball” effect in the trade, raising a serious disincentive to growers and suppliers alike to develop and market new ingredients in organic versions. This will lead inevitably to fewer organic ingredients becoming available, so that processors will need to use more non-organic ingredients in their “organic” finished products.

**e) In What Time Frame Must the Problem Be Resolved?**

We believe this problem is sufficiently serious to be addressed immediately.

**f) If the Problem Deserves Immediate Attention, What Other Priorities Must Be Adjusted to Accommodate This Problem?**

It should not take a major commitment of time or staff resources in the National Organic Program to address this problem. This does not call for the issuance of a new policy. We

propose a short guidance bulletin, specifically a Question and Answer posted on the NOP website, to explain the “organic preference” rule and emphasize its applicability and importance. Therefore, it would appear that the NOP could address this problem promptly without needing to adjust its other priorities.

**g) If the Problem Deserves Immediate Attention, What Are the Consequences of a Delay?**

A delay would mean lost opportunities for new organic production, as well as a loss in confidence in the National Organic Program by consumers. Following is a detailed discussion of the serious short-term and long-term consequences if the NOP were to delay in responding to this problem.

- Business Uncertainty in the Short Term. Firms that supply organic ingredients to manufacturers must make business and financial decisions every day on which organic ingredients they will handle for resale. As they are not satisfied that certifiers and processors are fully implementing the “organic preference” rule, this is why these firms are now presenting this issue before the NOP. Sometimes these firms have definite orders from customers before they commit to purchase organic ingredients for resale. However, a large part of their business is to look for opportunities to buy stocks of organic ingredients at favorable prices before they have found customers. Today, in this climate of uncertainty, illustrated by the organic yeast importer’s experience, these firms are reluctant to make such speculative purchases until this problem is resolved.
- Damage to the Future of Organic Production and Marketing in the Long Term. One of the key principles underpinning the National Organic Program Final Rule is that manufacturers are to move toward ever-higher levels of organic ingredient content. The “organic preference” requirement--that manufacturers use new organic ingredients when they are available--encourages producers to commit organic acreage for production of additional crops, and encourages handlers to market to manufacturers a constant flow of new organic ingredients, thus leading to finished products with more and more organic contents. The longer time passes with manufacturers not fully required to comply with “organic preference,” the greater the risk that this will cripple the movement toward wider development of new organic ingredients. The supply of new organic ingredients will begin to dry up, as suppliers move on to service other markets. Organic farmers and handlers will have fewer opportunities to market to the organic ingredient trade. At the consumer level, fewer products will be able to reach the 95 or 100 percent organic content requirement. In products labeled “organic,” more will contain only the minimum 95 percent organic ingredients, instead of higher percentages that would be possible if organic ingredients were available. As consumers become aware of this erosion of organic ingredient standards, it will damage their confidence in the organic products that they buy. These are the long-term risks of leaving the “organic preference” problem unattended. The

“organic preference” problem threatens, therefore, to undermine one of the essential aims of the National Organic Program.

### **3. Develop Possible Solutions**

#### **a) Propose ideas for possible solutions.**

- As explained in 2(a), “Why Is There a Problem?” there are three issues that need to be addressed:
  1. Many certifiers and ingredient users are confused about the “organic preference” rule, because of its complex provisions and because of OMRI’s misinterpretations concerning certain ingredients.
  2. Some certifiers are not confused about the “organic preference” rule as it applies to ingredients under consideration, but are simply deciding not to enforce it vigorously, even if they and the ingredient users know that organic ingredients are commercially available.
  3. Finally, certifiers and ingredient users need to be better informed about which ingredients are commercially available in an organic form.
- To address issues 1 and 2, we propose that the NOP issue an appropriate guidance communication that will clear up any possible confusion surrounding “organic preference” in the Final Rule. This would be explicit guidance that the “organic preference” rule, § 205.301(f)(6), applies for all products labeled as “organic,” and § 205.270(b)(1) also applies for materials listed under §§ 205.605 and 205.606. In other words, for products labeled as “organic,” whenever an ingredient is commercially available in organic form, that organic ingredient must be used rather than a nonorganic substitute.

We propose the Question and Answer format, and for this reason we are submitting, in a separate document, three Questions and Answers that raise specific hypothetical fact situations. These questions deal, respectively, with organic spices, organic yeast and organic ingredients in livestock feed. These Questions and Answers will dispel the confusion that has arisen over the “organic preference” rule, and will serve as a reminder to certifiers of the importance of strict adherence to this rule.

- To keep certifiers well informed on new organic ingredients, there is a vital need for a central source of information on which ingredients are or are not “commercially available.” We see the Internet as a potential tool for gathering and disseminating this information in “real time.” If a certifier is working with a processor client who has attempted unsuccessfully to find an organic ingredient, and the certifier could then report this on a website, this information would instantly reach the organic ingredient trade and if the commodity is in fact available, a seller or sellers could immediately

contact the potential buyer as well as the certifier. We understand that the NOP has already considered setting up such a website, and that both the Organic Trade Association (OTA) and OMRI have discussed it as well. The firms that are submitting this letter intend to take an active role, primarily through the OTA, to advocating such a website.

#### **b) Evaluate Ideas for Possible Solutions.**

In listing the pros and cons of having a Question and Answer format, we would see two pros and no cons. The following are the pros:

Familiar format. Accredited certifying agents, the principal audience for this guidance, are familiar with the Questions and Answers posted on the NOP website.

Speed. Accredited certifying agents are already familiar with the general issue of organically produced contents in products labeled "organic." Therefore, the NOP can fairly quickly prepare Questions and Answers and then post them on the NOP website. .

#### **c) Select a Solution.**

We believe that the solution we have outlined, a series of Questions and Answers, is the proper solution. It would be legal, practical and supported by the foregoing credible and compelling facts. We are confident that imparting this information in NOP guidance will solve the problem.

- **How Does the Recommended Solution Solve the Problem?**

The problem, as we have stated, is that accredited certifying agents are not fully implementing the principle of "organic preference" under § 205.301(f)(6) and other provisions of the Final Rule. The recommended solution is for the NOP to issue guidance by means of a series of Questions and Answers to be posted on the NOP website. This will not address the need for a central website to disseminate information on new organic ingredients. However, it will address other causes of the problem, namely, confusion about what the "organic preference" rule requires and lax enforcement of "organic preference" by some certifiers.

#### **4. Develop, Approve and Implement Action Plan**

The Action Plan would consist of preparing the Questions and Answers and posting them on the NOP website.

**REQUEST TO NATIONAL ORGANIC PROGRAM,  
AGRICULTURAL MARKETING SERVICE, USDA  
TO ISSUE GUIDANCE FOR PRODUCTS LABELED "ORGANIC,"  
DIRECTING THAT WHEN ORGANIC INGREDIENTS ARE AVAILABLE,  
THEY MUST BE USED INSTEAD OF NONORGANIC SUBSTITUTES**

**3 PROPOSED QUESTIONS AND ANSWERS ON ORGANIC INGREDIENTS:**

- ✓ SPICES
- ✓ YEAST
- ✓ IN LIVESTOCK FEED

**SUBMITTED BY RICHARD D. SIEGEL, ATTORNEY AT LAW  
JANUARY 15, 2004**

**ON BEHALF OF:  
BETA PURE FOODS, APTOS, CA  
CIRANDA, INC., HUDSON, WI  
CLARKSON GRAIN, CERRO GORDO, IL  
FORESTRADE, INC., BRATTLEBORO, VT  
FRONTIER NATURAL PRODUCTS COOPERATIVE, NORWAY, IA  
GLOBAL ORGANICS, LTD., ARLINGTON, MA  
MAINE COAST SEA VEGETABLES INC., FRANKLIN, ME  
MARROQUIN INTERNATIONAL ORGANIC COMMODITY SERVICES, INC.,  
SANTA CRUZ, CA  
MIDWESTERN BIO-AG PRODUCTS AND SERVICES, INC.,  
BLUE MOUNDS, WI  
OJAI ORGANICS, OJAI, CA  
ORGANIC INGREDIENTS, INC., APTOS, CA  
THORVIN, INC., NEW CASTLE, VA  
TRADIN ORGANICS USA, INC., AMHERST, NH  
WHOLESOME SWEETENERS, INC., SUGAR LAND, TX**

## ORGANIC SPICES

- Q. I am manufacturing a processed food product that is labeled “organic.” So far I have been using 95 percent organically produced ingredients and 5 percent ingredients, such as spices, that have not been available in organic versions. Now I understand that one of the spices I use is on the market in an organic version, but the organic version will be more expensive than the conventional spice I have been using. Since the spice is only a minor ingredient and makes up less than 5 percent of the ingredients, am I required to use the organic version now that it is available? If so, do I have to use only the organic version or can I use a combination of the nonorganic and the organic spice?

A. The answer to your first question is yes. If an organic spice is available that meets your specifications for that spice, you will need to use the available organic spice and you may not use any nonorganic spice. Until now you have been allowed to use a nonorganic spice as part of the 5 percent nonorganic portion of your “organic” product. However, assuming that a spice that would meet your specifications is available in organic form, you are no longer free to use it in its nonorganic version in your “organic” product. There are two provisions of the Final Rule that apply. First, in § 205.301(b), a minimum of 95 percent organic content is required, and then “Any remaining product ingredients must be organically produced, unless not commercially available.” Since the spice has become “commercially available” as organically produced, that means you must use the organically produced version. Second, there is another similar provision that applies to products labeled as “organic.” This provision, § 205.301(f)(6), requires that if a product is labeled “organic,” it may not be produced using nonorganic ingredients when organic ingredients are available.”

As for your second question, about using a combination of the same spice, in organic and nonorganic forms, since you are required to use the commercially available organic spice, this means you must not use any of this spice that is nonorganic in the product. In § 205.301(f)(7), the Final Rule requires that if a product is labeled “organic,” it may not “include organic and nonorganic forms of the same ingredient.”

## ORGANIC YEAST

- Q. I am manufacturing an “organic” food product that calls for yeast as an ingredient. Since yeast that is not organically produced is on the National List at § 205.605(a), it has been acceptable in my product, as long as it is within the 5 percent portion that can be nonorganic ingredients. Now I understand that organically produced yeast is available on the market. Do I have to switch from using nonorganic yeast to organic yeast?

A. Yes, you do have to use organic yeast, provided that the organic yeast meets your specifications. While you have had permission until now under § 205.605(a) to use nonorganic yeast in your “organic” product, now that organic yeast is available on the market, there are three provisions in the Final Rule that apply in your case.

First, while a product labeled “organic” is allowed to have up to 5 percent nonorganically produced ingredients, that is only allowed if the nonorganically produced ingredients within the 5 percent are not commercially available in organic form. As the Final Rule provides, in § 205.301(b), a minimum of 95 percent organic content is required, and then “Any remaining product ingredients must be organically produced, unless not commercially available.” Now that organic yeast is commercially available, assuming it meets your specifications, you are required to use it in your “organic” product.

Second, there is another similar provision that applies to products labeled as “organic.” This provision, § 205.301(f)(6), requires that if a product is labeled “organic,” it may not be produced using nonorganic ingredients when organic ingredients are available.” So now that organic yeast is commercially available, assuming it meets your specifications, you are required to use the organic yeast for your “organic” product.

Third, nonorganic yeast is currently allowed on the National List as a nonagricultural product under § 205.605(a). But since yeast is now commercially available in organic form, under § 205.270(b)(1) you are required to use the organic form instead of the nonorganic form.

## ORGANIC INGREDIENTS IN LIVESTOCK FEED

- Q. I am manufacturing a commercial livestock feed labeled “organic.” I understand that I am allowed to include feed additives and supplements that are not organically produced, as long as they meet the requirements in § 205.237(a). I also understand that these nonorganic additives and supplements are permitted to take up more than 5 percent of the contents. Now I have learned that some of the feed additives and supplements that I use in this feed are available in organic versions. Do I have to switch from the nonorganic forms of these additives and supplements to the organic ones?

A. Yes, if the organic additives and supplements on the market meet your specifications, you do have to switch. Until now you have been permitted under § 205.237(a) and § 205.301(e)(2) to use nonorganic additives and supplements in your “organic” livestock feed. However, now that there are organic versions of some of your feed additives and supplements available, a different provision in the Final Rule would apply. If you are making any product labeled as “organic,” including your commercial livestock feed, then, under § 205.301(f)(6), you must use organically produced ingredients in your product whenever those ingredients are available. Now that some of the additives and supplements that you use in your “organic” feed product are available in organic form, in order to label your product “organic” you must use those organic additives and supplements, provided that they meet your specifications.