Draft NOSB Recommendation for additional regulations pertaining to – Closing potential organic labeling misrepresentation loophole for labels with the PDP, ingredient deck and information panel all on a single labeling panel.

Add the following to section § 205.305:

(c) Any product in which the principal display panel, the information panel and ingredient statement are all present on a single panel of a label may only identify the organic content of the product by:

(1) Identifying each organically produced ingredient in the ingredient statement with the word, "organic," or with an asterisk or other reference mark which is defined below the ingredient statement to indicate the ingredient is organically produced;
(i) in a font size and style that is no different than that used for all other ingredients in the statement; and
(ii) in a font size that is no more than 20% of the size of the largest font size on the panel
(2) If the organically produced ingredients are identified in the ingredient statement, displaying the product's percentage of organic contents on the information panel;
(i) in a font size no larger than that used for the ingredient statement; and
(ii) in a font size and style that is no different than that used for the ingredient statement.

The proposed new section would read:

§ 205.305 Multiingredient packaged products with less than 70 percent organically produced ingredients.
(a) An agricultural product with less than 70 percent organically produced ingredients may only identify the organic content of the product by:
(1) Identifying each organically produced ingredient in the ingredient statement with the word, "organic," or with an asterisk or other reference mark which is defined below the ingredient statement to indicate the ingredient is organically produced, and
(2) If the organically produced ingredients are identified in the ingredient statement, displaying the product's percentage of organic contents on the information panel.
(b) Agricultural products with less than 70 percent organically produced ingredients must not display:
(1) The USDA seal; and
(2) Any certifying agent seal, logo, or other identifying mark which represents organic certification of a product or product ingredients.

(c) Any product in which the principal display panel, the information panel and ingredient statement are all present on a single panel of a label may only identify the organic content of the product by:

(1) Identifying each organically produced ingredient in the ingredient statement with the word, "organic," or with an asterisk or other reference mark which is defined below the ingredient statement to indicate the ingredient is organically produced;
(i) in a font size and style that is no different than that used for all other ingredients in the statement; and
(ii) in a font size that is no more than 20% of the size of the largest font size on the panel
(2) If the organically produced ingredients are identified in the ingredient statement, displaying the product's percentage of organic contents on the information panel;

(i) in a font size no larger than that used for the ingredient statement; and
(ii) in a font size and style that is no different than that used for the ingredient statement.

Rationale: A loophole has been identified in the regulations in which an uncertified handler could potentially mislead the consumer in the labeling scheme of a product. This misleading labeling possibility would apply to products in which all information including the PDP, information panel and ingredient statement are all included on a single panel label such as that commonly seen on a loaf of bread, a block of tofu or a single service beverage container. The misleading labeling stems from the lack of restrictions in the regulations on the size and style of the font used to denote organic ingredients and % of organic ingredients by an uncertified handler or in multiingredient packaged product with less than 70% organically produced ingredients. It is possible under the current regulations to bring an inordinate amount of attention to the "organic" claim by using a very large font size or special style for the organic ingredient(s) and % organic declaration. Because all of the information is on a single panel the consumer could easily believe that the product is certified or that it is "more" organic than intended by the regulations. Applicable sections allowing the potential loophole are **§ 205.101 (3) and (4).**

NOSB Processing Committee
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