

Date: October 5, 2020

Docket: AMS-NOP-17-0065

Re: Strengthening Organic Enforcement Proposed Rule – Calculating Organic Percentages

Thank you for this opportunity to provide comment on the United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) National Organic Program (NOP) Proposed Rule on Strengthening Organic Enforcement. The Organic Trade Association is submitting individual comments on each topic in the proposed rule to help NOP in its process of finding and navigating our positions and recommendations. We have also submitted all of our comments bundled into a single PDF including a cover letter.

This comment addresses Section #12: Calculating Organic Percentages.

Summary of the Organic Trade Association’s (OTA) Positions and Recommendations

- OTA supports a revision to the organic regulations to clarify the division method used to calculate the organic percentage of a NOP certified product. The intent of NOP’s proposed revisions aligns with OTA’s Comments on the corresponding NOSB recommendation and NOP Draft Guidance 5037.
- OTA supports the proposed revisions with minor adjustments to further clarify that the calculation should be made “at formulation.”
- OTA requests that NOP complete its process and finalize NOP Guidance 5037. Additional clarification on when to exclude water from individual ingredients is greatly needed.
- OTA supports an implementation period of one year after the publication of the final rule.

OTA’s Positions and Recommendations

- **OTA supports revising the organic regulations to clarify the division method used to calculate the organic percentage of a NOP certified product.** There is broad consensus that the standard practice of calculating the organic percentage of a product is to divide the total net weight of combined organic ingredients **at formulation** (excluding water and salt) by the total weight of all ingredients **at formulation** (excluding water and salt). Thus, a simple change to the Regulation at § 205.302 is needed to clarify that the calculation should be made by dividing both the weight or volume of the organic ingredients, by the weight or volume of total ingredients **at the time of formulation**. Dividing the organic ingredients (at formulation) by the total ingredients (of the finished product) does not make sense because most ingredients/products lose weight during processing. Furthermore, in order to accurately calculate a percentage using division, the dividend

and the divisor must be units of the same kind. The intent of the proposed revisions aligns with OTA's Comments on the corresponding NOSB recommendation and NOP Draft Guidance 5037.

- **OTA supports the proposed revisions with minor adjustments to improve clarity around the exclusion of water and salt.** The proposal is consistent with the NOSB recommendation that informed Draft NOP 5037. However, the parenthetical placement of “(excluding water and salt)” may create confusion about whether the weight/volume of water and salt should be excluded as ingredients that are added to the product formulation (added by the certified operator making the product), or whether the weight/volume of water and salt should be excluded from each individual ingredient used in the product formulation (in addition to the water and salt added by the certified operator). The latter would be impractical in many cases and was never the intent of the NOSB recommendation. There are however some instances where water would need to be excluded from the ingredient; tea is a good example. First and foremost, OTA recommends minor revisions to improve the clarity and consistency by which certifying agents and certified operations will carry out the calculation process.

→ **Recommendation:** § 205.302(a)(1)- (3) – Add the clause “at formulation” to both the ‘dividend’ and the ‘divisor’ to further clarify that the weight/volume of the organic ingredients as well as the weight/volume of the total ingredients should be determined at formulation. It is important that the units are consistent.

→ **Recommendation:** § 205.302(a)(2) – Remove the redundant words (“the ingredients”) from the last sentence.

See OTA's s requested revisions in Table 17

- **OTA requests that NOP complete its process and finalize Draft NOP Guidance 5037.** Draft NOP Guidance 5037 was published and underwent a public comment period. However, the Guidance has not been finalized. With consideration of the public comments received, finalized Guidance is still needed to provide additional clarification that is not addressed by this proposed rule. Specifically, there is varying interpretation about the exclusion of water from individual ingredients that are used in a product formulation. There appears to be consistency around excluding water and salt when they are added to a product formulation as ingredients. Clarification is needed on when to exclude water from individual ingredients.

→ **Recommendation for Guidance:** OTA requests that NOP complete its process and Finalize Guidance 5037.

Table 17: OTA’s Requested Revisions to the Proposed Rule and Recommendations for Guidance

Action & Section	Proposed Rule Text	Revisions and/or Guidance needed to implement OTA’s Positions and improve the quality, clarity and utility of the Proposed Rule.
205.302(a)(1)	Dividing 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.	<p>Revisions needed:</p> <ul style="list-style-type: none"> • Clarification is needed to ensure that the calculation is performed “at formulation.” The weight/volume of the organic ingredients as well as the weight/volume of all ingredients should be determined “at formulation” rather than after the product is processed. OTA recommends adding “at formulation” to both the dividend and the divisor. It is important that the units are consistent. • The parenthetical placement of “(excluding water and salt)” may create confusion about whether the weight/volume of water and salt should be excluded as ingredients that are added to the product formulation (added by the certified operator making the product), or, whether the weight/volume of water and salt should be excluded from each individual ingredient used in the product formulation. <p>Guidance needed: Finalized NOP 5037 Guidance is still needed to provide additional clarification that is not addressed by this proposed rule. Specifically, there is varying interpretation about the exclusion of water from individual ingredients that are used in a product formulation. There appears to be consistency around excluding water and salt when they are added as ingredients to the product formulation.</p>
<p>OTA Requested Revision: Dividing the total net weight (excluding water and salt) of combined organic ingredients at formulation (excluding water and salt) by the total weight (excluding water and salt) of all ingredients <u>at formulation (excluding water and salt)</u>.</p>		
205.302(a) (2)	Dividing the fluid volume of all organic ingredients (excluding water and salt) at formulation by the fluid volume of all ingredients (excluding water and salt) if	<p>Revision needed: The proposed revision to the last sentence is redundant and/or not clear (“ingredients and all ingredients”). OTA’s</p>

	<p>the product and ingredients are liquid. If the liquid product is identified on the principal display panel or information panel as being reconstituted from concentrates, the calculation should be made based on single-strength concentrations of the ingredients and all ingredients.</p>	<p>recommended revision will simplify the sentence and make it consistent with the NOSB recommendation.</p> <p>(2) Dividing the fluid volume of all organic ingredients (excluding water and salt) by the fluid volume of all ingredients (excluding water and salt) if the product and ingredients are liquid. If the liquid product is identified on the principal display panel or information panel as being reconstituted from concentrates, the calculation should be made on the basis of single-strength concentrations of all the ingredients.</p>
<p>OTA Requested Revision: (2) Dividing the fluid volume of all organic ingredients (excluding water and salt) at formulation (excluding water and salt) by the fluid volume of all ingredients <u>at formulation (excluding water and salt)</u> if the product and ingredients are liquid. If the liquid product is identified on the principal display panel or information panel as being reconstituted from concentrates, the calculation should be made <u>on the basis of</u> based on single-strength concentrations of the ingredients and finished product <u>all the ingredients</u>.</p>		
<p>205.302(a) (3)</p>	<p>For products containing organically produced ingredients in both solid and liquid form, dividing the combined weight of the solid organic ingredients and the weight of the liquid organic ingredients (excluding water and salt) at formulation by the total weight (excluding water and salt) of all ingredients.</p>	<p>Revision needed: Minor revisions are needed to further clarify the exclusion of water and salt, and that the calculation should be made “at formulation.”</p> <p>Note the NOSB recommendation): (3) For products containing organically produced ingredients in both solid and liquid form, dividing the combined weight of the solid ingredients and the weight of the liquid ingredients (excluding water and salt) by the total weight (excluding water and salt) of all ingredients.</p>
<p>OTA Requested Revision: (3) For products containing organically produced ingredients in both solid and liquid form, dividing the combined weight of the solid organic ingredients and the weight of the liquid organic ingredients (excluding water and salt) at formulation (excluding water and salt) by the total weight (excluding water and salt) of <u>all ingredients at formulation (excluding water and salt)</u>.</p>		

On behalf of our members across the supply chain and the country, the Organic Trade Association thanks the National Organic Program for your commitment to protecting organic integrity.

Respectfully submitted,



Gwendolyn Wyard
Vice President, Regulatory and Technical Affairs



Johanna Mirinda
Farm Policy Director

cc: Laura Batcha
Executive Director/CEO
Organic Trade Association